

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

**GENERAL CONDITIONS
FOR
CONSTRUCTION CONTRACTS**

JULY 2003

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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ARTICLE GC1

ABBREVIATIONS, DEFINITIONS AND GENERAL TERMS

GC1.1 General. Wherever in the Contract Documents the following abbreviations, acronyms, and terms, or pronouns in place of them, are specified, they shall in each case be understood to mean the full name of the respective organization as follows:

GC1.2 Abbreviations.

BART	The San Francisco Bay Area Rapid Transit District
CAL/OSHA	State Occupational Safety and Health Act (Agency)
Caltrans	California Department of Transportation
DFE	District-Furnished Equipment
DFM	District-Furnished Material
DMP	Designated Matching Product
FAR	Federal Acquisition Regulations (Title 48 Code of Federal Regulations)
NTP	Notice to Proceed
OMB	Office of Management and Budget
OSHA	Federal Occupational Safety and Health Act (Agency)
C.P.U.C.	Public Utilities Commission of the State of California
VECP	Value Engineering Change Proposal

GC1.3 Definitions.

Acceptance. The formal written Acceptance of the Work by the District issued in accordance with Article GC5.14, effective upon the date of recordation pursuant to State Civil Code Section 3093.

Addenda. Written errata, interpretations of or revisions to the Bid Documents issued by the District before the Bid opening.

Allowance. An amount established in the Contract Documents for inclusion in the Contract Price to cover the cost of prescribed items not specified in detail, with provision that variations between such amount and the finally determined cost of the prescribed items will be reflected in Change Orders appropriately adjusting the final Contract Price.

Approved Final Invoice. Contractor's final invoice for the Work as approved by the District and described in Article GC9.8.

Award. The acceptance by the District of a Bid.

BART System. The San Francisco Bay Area Rapid Transit System, consisting of all real and personal property, including right-of-way, tracks, structures, equipment and appurtenances, owned or controlled by the District.

Bid. The proposal or offer of the Bidder for the Work when completed and submitted on the prescribed Bid Form, properly signed and guaranteed and which includes the Bid Schedule with all applicable Bid Items priced by the Bidder.

Bid Documents. The Invitation to Bid, Instructions to Bidders, the documents which when executed comprise the Contract Documents, and Forms for the submittal of Bids.

Bid Form. The form on which the District requires Bids to be set forth and submitted.

Bid Item. An item of work listed in the Bid Schedule.

Bid Price. Sum of all Bid Item prices in a Bid Schedule (or sum of all item prices in summary of Bid Schedules, where more than one Bid Schedule is used) as agreed to in the Contract.

Bid Schedule. That part of the Bid Form which contains a list of Bid Items for which a Bidder quotes its prices, and Allowances established by the District.

Bidder. Any individual, firm, partnership, joint venture, corporation, or combination thereof, submitting a Bid for the Work contemplated, acting directly or through a duly authorized representative.

Bidder's Security. The cash, cashier's check, certified check, or Bidder's Bond accompanying the Bid submitted by the Bidder, as a guaranty that the Bidder will enter into the Contract with the District for the performance of the Work and obtain acceptable bonds and insurance if the Contract is awarded to the Bidder.

Bond, Bidder's. The security, in the form designated in the Bid Documents, to be furnished by the Bidder as a guaranty of good faith to enter into a Contract with the District, if the Contract is awarded to it.

Bond, Payment (Labor and Materials Bond). The security, in the form designated in the Bid Documents, to be furnished by the Contractor as a guaranty, that the Contractor will pay in full

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all bills and accounts for materials, labor and equipment used in the Work, as provided by law.

Bond, Performance. The security, in the form designated in the Bid Documents, to be furnished by the Contractor as a guaranty towards complete performance of all obligations required by the Contract.

Change. Any alteration in the Contract Documents, method or manner of performance; or furnishing of the Work, equipment, materials, facilities, services, site, performance schedule, or other provision of the Contract.

Change Notice. A written notice issued to the Contractor by the Engineer specifying a proposed change to the Contract Documents. Unless otherwise expressly stated in the Change Notice, a Change Notice is a request for Contractor's proposal which may result in a Change Order.

Change Order. A written order authorized by the District and issued to the Contractor amending the Contract Documents with or without the Contractor's signature.

Change Proposal. The Contractor's proposal for providing changed work following its receipt of a Change Notice from the District.

Contract. The written agreement executed by the District and the Contractor covering the performance of the Work and the furnishing of labor, materials, tools, and equipment in the construction and testing of the Work, which incorporates by express reference the Contract Documents.

Contract Book. The Invitation to Bid, Instructions to Bidders, General Conditions, Supplementary Conditions, forms for Statement of Qualifications and Business References, Designation of Subcontractors, Bidder's Bond, Bid Form and Contract, and additional documents incorporated by express reference into the Contract Book.

Contract Documents. The applicable Contract Drawings; Contract Book, containing the executed Contract; Contract Bonds; Addenda; Change Orders; General Conditions, Supplementary Conditions; those portions of the Standard Specifications referenced in the Contract Specifications; and additional documents incorporated by express reference into the Contract Documents.

Contract Drawings. The official plans, profiles, typical cross sections, general cross sections, elevations, schedules and details listed or referenced in the Contract Documents or amendments thereto, and supplemental drawings approved by the Engineer, which show the locations, character, dimensions, and details of the Work to be performed.

Contract Price. The Contract Price is the Bid Price agreed to in the Contract and authorized adjustments approved in writing by an authorized representative of the District, payable by the District to the Contractor for the performance of the Work under the Contract Documents.

Contract Specifications. The specifications prepared for specific contracts located in the Contract Book.

Contractor. The person or persons, firm, partnership, joint venture, corporation, or combination thereof, or other entity, private, municipal, or public, which, as an independent contractor, has entered into a Contract with the District, and which is referred to throughout the Contract Documents by singular number and neuter gender.

Contractor's Representative. An individual designated in writing by the Contractor who, upon approval by the Engineer, shall have complete authority to represent and to act for the Contractor.

Cost Principles. The principles and standards for determining the allowability, allocability and reasonableness of costs that are reimbursed (other than on the basis of predetermined force account procedures), claimed or negotiated.

The Cost Principles applicable to the organization incurring or proposing the cost are as follows:

For-profit (commercial) organizations	48 CFR Part 31
Non-profit organizations	OMB Circular A-122
State and local governments	OMB Circular A-87
Educational institutions	OMB Circular A-21

Critical Path. A set of Critical Path Operations that must be completed in a particular sequence in order to complete the Work, or a portion of the Work for which liquidated damages have been specified. A Critical Path does not necessarily include all of the operations required to complete the Work or any portion of the Work.

Critical Path Operations. Any feature of the Work (e.g., an operation or activity, or a settlement or curing period) that, if delayed or prolonged, will delay completion of the entire Work, or delay any portion of the Work for which liquidated damages have been specified.

Days. Unless otherwise designated, days mean calendar days.

Designated Matching Products (DMPs). Products designated by manufacturer's brand or trade name in the Contract Specifications and Contract Drawings and identified as "Designated Matching Products". The named specific material or product shall be provided and incorporated into the Work in the manner specified and further defined in the Contract Documents.

Directed. Directed by the Engineer.

District. The San Francisco Bay Area Rapid Transit District.

District-Furnished Equipment (DFE) or Materials (DFM). Equipment and materials furnished by the District for installation or use by the Contractor.

District's Estimate of Quantities. Quantities listed in the Bid Schedule of the Bid Form for items of Unit Price Work.

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Engineer. The District's representative as designated in the Supplementary Conditions.

FAR Cost Principles. Title 48 Code of Federal Regulations Part 31.

Final Inspection. The inspection carried out by the Engineer to verify that all Work including, but not limited to, the submission of required Contract Documents, Contract Drawings, Record Drawings, Record Documents, warranties, certifications, manuals, spares and data has been completed, and training completed in accordance with the Contract Documents.

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

General Conditions. The District's standard general contractual provisions for Construction Contracts which, as augmented and supplemented by other Contract Documents, describe the contractual relationship of the parties and their rights and responsibilities to each other.

Indicated. As shown on the Contract Drawings, as described in the Contract Specifications, or as required by the other Contract Documents.

Install. In reference to the Work to be performed by the Contractor, install shall be understood to mean: anchored, fastened, or connected in place and adjusted for use; placed or applied in proper position and location; established in place and position for use or service in working order.

Jobsite. The area to be occupied for construction and all adjacent areas and other related areas occupied or used by the Contractor and Subcontractors during performance of the Work, including storage areas and buildings staging areas, and areas for the production, procurement, storage, and disposal of earthwork, concrete, and paving materials, and similar materials and equipment.

Non-Jobsite. Facilities or areas owned, leased, or otherwise occupied by the Contractor or Subcontractors or suppliers of any tier which are located away from the Jobsite and are used by the Contractor or said Subcontractors or suppliers in support of the Work, including administration offices, design offices, manufacturing facilities, warehouses, stores, shipping terminals, or similar commercial facilities.

Non-Transit Facilities. Facilities which are not a part of the BART System.

Notice of Award. The written notice by the District to the successful Bidder stating that upon compliance by the successful Bidder with the conditions precedent enumerated therein, within the time specified. The District will sign and deliver the Contract.

Notice of Potential Claim. A written notice from the Contractor to the District submitted in accordance with Article

GC9.4 informing the District of a potential claim against the District.

Notice to Proceed. Written notice from the District to the Contractor to proceed with the Work.

Notice of Termination. Written notice from the District to the Contractor to stop work under, and to terminate, the Contract on the date and to the extent specified.

Option. A unilateral right in the Contract by which, for a specified time, the District may elect to purchase, at a pre-determined price specified in the Contract, additional equipment, supplies, services or work called for by the Contract.

Proposed Final Invoice. Contractor's Proposed Final Invoice for the Work as described in Article GC9.8.

Provide. In reference to the Work to be performed by the Contractor, Provide shall be understood to mean permanently furnished and installed complete in place.

Record Documents. All Contract Documents, warranties, certificates, operations and maintenance manuals, training manuals, software, software documentation, data, and other Submittals which are required by the Contract to be delivered to the District which reflect the construction of the Work, installation of systems, and furnishing of equipment as actually completed under the Contract.

Record Drawings. Drawings submitted by the Contractor incorporating all changes to or deviations from the Contract Drawings showing the actual condition of the Work as it was completed.

Reference Documents. District drawings, specifications, and other documents which are not Contract Documents, but which provide supplemental information regarding the Contract for information only.

Reference Drawings. Drawings provided to the Contractor, which are not Contract Documents, but which provide supplementary information regarding the Contract for reference and information only.

Referenced Standards. Design and/or Construction industry standards, referenced in the Contract Documents, such as standard specifications, codes, practices, and the requirements for materials, equipment, work quality, installation, inspections, and tests, which are published and issued by organizations, societies, and associations.

Referenced Utility Standards. Drawings and specifications published by municipalities or utility companies and referenced in the Contract Documents.

Revenue Operations. The District's operations in which paying passengers ride the trains in scheduled public service.

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Shop Drawings. Documents furnished by the Contractor to illustrate specific portions of the Work. Shop Drawings include drawings, diagrams, illustrations, schedules, charts, brochures, tables and other data describing fabrication, construction, and installation of the Work.

Standard Specifications. The District's Standard Specifications for Construction Contracts, which specifications are applicable to the Work to the extent referenced in the Contract Specifications.

Standard Drawings. BART Standard Plans.

State. The State of California.

Subcontract. Any contract between the Contractor and a Subcontractor, or between Subcontractors of any tier, to perform a portion of the Work.

Subcontractor. Any person or persons, firm, partnership, joint venture, corporation, or combination thereof, or other entity which contracts with Contractor or any Subcontractor of any tier for the performance of any portion of the Work.

Submittal. A written or graphic document or sample prepared by or for the Contractor which is required by the Contract Documents to be submitted to the District by the Contractor.

Substantial Completion. The time at which the Work (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

Supplementary Conditions. A part of the Contract terms and conditions located in the Contract Book. Such Supplementary Conditions modify and augment the General Conditions.

Supplier. A Subcontractor who is a manufacturer, fabricator, supplier, distributor, or vendor having a contract with the Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

Utility. All public and private facilities, other than the BART System facilities, which relate to the conveyance and supply of water, sewage, gas, chemicals, steam, petroleum products and other piped installations; and all public and private facilities, other than the BART System facilities, which relate to electrical energy, telephone, telegraph communications, radio, television and public transit installations.

Value Engineering Change Proposal: A proposal originated, initiated and developed by the Contractor that proposes a Credit Change to the Contract, a portion of which credit shall be retained by the Contractor. A VECP shall not alter the essential functions and characteristics of the item of work.

Work. All performance required under the Contract as specified, shown, or indicated in the Contract Documents, including all alterations, amendments or extensions thereto made by Change Orders as specified in Article GC4.2.

GC1.4 References to Articles. References to Articles include all subarticles and sub-subarticles under the Article referenced (for example, a reference to Article GC7.14 is also a reference to GC7.14.1 through GC7.14.3), and references to subarticles similarly include references to sub-subarticles.

GC1.5 Use of Referenced Standards. In case of a conflict between the Contract Specifications and Referenced Standards, the Contract Specifications shall govern. Unless otherwise specified, Referenced Standards apply only to material, workmanship, and procedure. Commercial terms and legal responsibilities are not intended to be included in the reference. All material, equipment, and workmanship, specified by the number, symbol, or title of a Referenced Standard shall comply with the latest edition or revision thereof and all amendments and supplements thereto in effect on the date of the Invitation to Bid, except where a particular edition or revision thereof is indicated in the reference.

GC1.6 Use of Referenced Utility Standards. Referenced Utility Standards shall apply only to material and workmanship with respect to work which upon completion is to be accepted by a municipality or a utility company.

GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

ARTICLE GC2

BONDS AND INSURANCE

GC2.1 Contract Bonds. Concurrently with execution of the Contract in accordance with Article GC3.1, the Contractor shall furnish the following Contract bonds:

- (a) Performance Bond in an amount not less than 100 percent of the Contract Price, excluding allowances.
- (b) Payment Bond (Labor and Materials Bond) in an amount not less than 100 percent of the Contract Price, excluding allowances.

Contract bonds shall be on forms provided by the District and shall be executed as surety by a corporation or corporations authorized to issue surety bonds in the State and acceptable to the District. For Contracts of less than one million dollars, the Performance Bond may be executed as surety by U.S. Treasury Listed Surety Companies acceptable to the District. "U.S. Treasury Listed Surety Company" shall be defined as follows:

A bonding company holding a valid certificate of authority issued by the United States Secretary of Treasury authorizing said company to do business with the United States as surety on, or reinsurer of, recognizances, stipulations, bonds and undertakings, under the provisions of the Act of July 30, 1947 (61 Stat. 646, as amended: 6 USC 6-13).

GC2.1.1 Surety Notice and Consent Not Required. All alterations, extensions of time, extra and additional Work, and other changes authorized by BART in accordance with the Contract Documents may be made without giving notice to or securing the consent of the surety or sureties on the Contract bonds.

GC2.1.2 Term of Bonds. The Performance Bond shall continue in full force and effect for the guaranty periods specified in Article GC4.9. The Payment Bond shall continue in full force and effect until the expiration of the time limit established by California Civil Code Section 3249.

GC2.2 Insurance. The District's insurance requirements are specified in the Supplementary Conditions.

GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

ARTICLE GC3

EXECUTION OF CONTRACT

GC3.1 Execution. Within ten days of the receipt of a Notice of Award, the Contractor shall deliver the Payment Bond, Performance Bond, and specified certificates of insurance to the District and shall properly execute three copies of the Contract at the offices of the District. Contractor shall endorse the Contract at the time of execution with the statement required by Section 7030 of the State Business and Professions Code and with its Contractor's license number as required by Section 7030.5 of the State Business and Professions Code. Said statement is included in the Contract form located in the Contract Book.

GC3.1.1 Workers' Compensation. Pursuant to the requirements of Section 1860 of the State Labor Code (Chapter 1000, Statutes of 1965), the Contractor shall secure the payment of workers' compensation to its employees in accordance with the provisions of Section 3700 of the State Labor Code. Prior to commencement of the Work, the Contractor shall sign and file with the District a certification in the following form:

"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."

Said certification is included in the Contract, and signature and return of the Contract as provided in Article GC3.1 shall constitute signing and filing of the said certificate. The District's requirements concerning workers' compensation insurance are specified in the Supplementary Conditions as indicated in Article GC2.2.

GC3.2 Failure to Execute Contract. Failure of a Bidder to whom the Contract is awarded to execute the Contract or to file acceptable bonds or insurance, as provided herein shall be just cause for the annulment of the award and the forfeiture of such Bidder's Security.

GC3.3 Contractor's Review of Contract and Work Conditions. By bidding or proposing for the Work and by executing the Contract, the Contractor certifies that it has carefully reviewed, has had clarified, and understands, all of the Bid Documents, has inspected the Jobsite as needed to evaluate and assess all pertinent existing conditions applicable to the Work, and is satisfied as to its ability and intention to conduct and complete the Work required in the Bid Documents on the terms and conditions stated in the Contract. In particular, the Contractor certifies that it has reviewed the requirements for the format and detail of records to be maintained at all times during the performance of Work, and that it has instituted or will implement the preparation and maintenance of all such records. In particular, the Contractor represents as follows:

- (a) It is familiar with and is satisfied as to all Federal, State, and local laws and regulations that may affect the cost, progress, performance and furnishing of the Work;
- (b) It is aware of the general nature of any work to be performed by the District that relates to the Work as indicated in the Contract Documents;
- (c) It has correlated the information known to Contractor and information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents with the Contract Documents; and
- (d) It has given the District written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Bid Documents and the written resolution thereof is acceptable to Contractor and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

GC3.3.1 Access. The Contractor shall investigate and bear the risk of the conditions of existing public and private roads and of clearances, restrictions, bridge load limits, and other limitations affecting transportation, ingress, and egress at the project site(s). The unavailability of transportation facilities or limitations thereon shall not become a basis for claims for damages or extension of time for completion of the Work.

GC3.3.2 Haul Routes. The Contractor shall assume full responsibility for determining that the jurisdiction through which its haul routes pass will permit the hauling operations with respect to laden weights, type of vehicle, frequency and dimensions of loads, required traffic control and hours of operation. All necessary permits, licenses or bonds shall be obtained and paid for by the Contractor. The unavailability of haul routes or limitations thereon shall not become a basis for claims, for damages or extension of time for completion of the Work.

GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

ARTICLE GC4

SCOPE OF WORK

GC4.1 Intent of Contract Documents. The intent of the Contract Documents is to describe the construction and completion of the Work. Where the Contract Documents describe portions of the Work in general terms, but not in complete detail, the best practice shall be followed and only materials and workmanship of best quality shall be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment and incidentals which are necessary to complete the Work in accordance with the Contract Documents.

GC4.1.1 Assignments of Work. Subject to the District's rights under Articles GC5.7 and GC5.8, assignments of work to the various trades or crafts will be the responsibility of the Contractor and a matter of agreement between the Contractor and Subcontractors and their employees or the organizations representing them.

GC4.1.2 New Equipment and Materials. All equipment or material to be provided by the Contractor shall be newly manufactured products.

GC4.2 Changes. The District reserves the right to make alterations to, deviations from, additions to, or deletions from the Contract Documents and to require such changes in the extent or manner of performance of the Work as are determined by the District to be necessary. Work not covered by any of the items for which there are unit prices or lump sum price or by any combination of such items, as determined by the Engineer, and work specifically designated as extra work in the Contract Documents, is extra work. The Contractor shall perform such extra work and furnish material and equipment therefor upon receipt of a Change Order therefor or a Change Notice issued pursuant to Article GC4.2.1.1. When so ordered by such Change Order or Change Notice, work will be priced in accordance with the provisions of Article GC9.3.

GC4.2.1 Change Notices. Each proposed Change to the Contract Documents will be described in a Change Notice issued by the District which will indicate either:

- (a) The proposed Change involves no change in Contract time of performance and either no change in the Contract Price or only items for which there are changes in quantities at Contract unit prices, or
- (b) The proposed change will require that the Contractor submit a proposal within the time specified.

GC4.2.1.1 Change Notice Work. If so ordered in a Change Notice, the Contractor shall promptly proceed with the Work described in the Change Notice as directed, even if the Contractor and the District have not yet agreed on any compensation or schedule adjustment for such work. Where the

compensation for changed work which will subsequently be covered by a Change Order cannot initially be determined or has not been negotiated, the District may require the Contractor to perform all or any portion of such changed work prior to agreement on an equitable adjustment for said work with the portion of such changed work performed prior to such agreement on equitable adjustment to be recorded in accordance with the provisions of Article GC9.3 as determined by the Engineer.

GC4.2.1.2 Contractor Agreement with Change Notice. If the Contractor agrees with the terms and conditions of a Change Notice under Article GC4.2.1(a), the Contractor shall sign a copy of the Change Notice and return it to the Engineer. A Change Order will be issued and the Contractor shall promptly proceed with the work as indicated therein. If the Contractor disagrees with the terms and conditions of a Change Notice, the Contractor shall follow the protest procedures set forth in Article GC4.2.1.4. If the Contractor fails to follow the protest procedures in Article GC4.2.1.4, a Change Order will be issued based on the District's good faith estimate and the Contractor shall not be entitled to any claim for additional compensation or schedule extension for the Change other than that specified in the Change Order.

GC4.2.1.3 Contractor Acknowledgement of Change Notice. When a Change Notice under Article GC4.2.1.(b) is issued, the Contractor shall sign the Change Notice and submit it to the Engineer together with a proposal for performing the changed work in accordance with Article GC4.2.2. If the Contractor disagrees with the terms and conditions of a Change Notice, the Contractor shall follow the protest procedures set forth in Article GC4.2.1.4. If the Contractor fails to submit a written protest in accordance with the provisions of Article GC4.2.1.4, the Contractor will be deemed to have consented to the terms and conditions set forth in the Change Notice and shall submit a Change Proposal in accordance with the provisions of Article GC4.2.2..

GC4.2.1.4 Change Notice Protests. If the Contractor disagrees with any terms or conditions set forth in a Change Notice, Contractor shall sign the Change Notice, indicate "protested" adjacent to Contractor's signature, and shall return the signed Change Notice to the Engineer within five working days after receipt of such Change Notice along with a written protest. The protest shall state the points of disagreement, include any Contract Document references, and shall propose a modification of the items. The Contractor shall submit to the Engineer information in sufficient detail that, in the Engineer's judgment, is sufficient to enable the District to analyze the merits of the Contractor's protest. The Engineer will consider the Contractor's protest and if it deems the protest valid will issue a revised Change Notice pursuant to Article GC4.2.1(b). If the District does not agree with the Contractor's protest, it will

GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

so notify the Contractor and the Contractor shall submit its proposal in accordance with Article GC4.2.2.

GC4.2.2 Contractor's Change Proposal. The Contractor shall submit its Change Proposal for providing changed work within ten working days after receipt of a Change Notice under Article GC4.2.1.4. The Contractor may request in writing an extension of time to submit its Change Proposal under Article GC4.2.1.4. Such request shall include the reasons that the Change Proposal cannot be submitted within ten working days, and the amount of additional time requested to submit its Change Proposal. The District may grant such an extension in writing at its sole discretion. If the Contractor fails to sign the Change Notice and submit its Change Proposal within ten working days after receipt of a Change Notice, or within the time extension granted by the District under this Article GC4.2.2, the District may, at its sole discretion, issue a Change Order on the basis of its good faith estimate of the additional cost and time to be incurred due to the proposed Change, and shall direct the Contractor to promptly proceed with the work as indicated in the Change Order. The Contractor's Change Proposal shall contain a detailed cost breakdown and any adjustment in Contract time for completion of the Work as follows:

(a) The cost breakdown of the Change Proposal shall have separate estimates of the direct costs of added work and deleted work for the following categories: labor, materials, equipment rental, subcontract work, and other costs. For Jobsite work, these categories shall be as defined in Article GC9.3. For Non-Jobsite work, these categories shall be consistent with the FAR Cost Principles. The Contractor shall submit detailed cost breakdowns as described above for any Subcontractor performing work under the Change. Upon request by the Engineer, the Contractor shall provide further detail and breakdown of cost elements included in the Contractor's or any Subcontractor's Change Proposal, including all supporting documentation. The Contractor shall further provide details about the effect of the Change on the Contract time for completion. The Cost Proposal shall specify any indirect costs determined by Article GC9.3 added to the direct costs. The requested information will be used by the Engineer to aid in evaluating the Contractor's Change Proposal. The Contractor shall include in its Change Proposal compensation and time due to the impacts, if any, of multiple Change Orders related to the work described in the Change Notice. The Contractor shall not submit with respect to that Change Order any claim for additional compensation or time due to the cumulative impact of such multiple Change Orders after execution of that Change Order.

(1) If the estimated cost of any such added category of work is greater than the estimated cost of the deleted work in the same category, the Contract Price will be increased by the sum of the agreed cost difference plus the applicable allowable percentages for such category of work pursuant to Article GC9.3.1 applied to such estimated cost difference. Indirect rates for Non-Jobsite work will be as negotiated with the Engineer, and shall be consistent with FAR Cost Principles.

(2) If the estimated cost of any such deleted category of work is greater than the estimated cost of the added work in the same category, the Contract Price will be reduced by 105 percent of the agreed cost difference.

(b) The cost breakdown shall not exceed the limitations on compensations specified in the force account provisions of Article GC9.3. for Jobsite work. For Non-Jobsite work, the cost breakdown shall not exceed the compensations specified in the FAR Cost Principles. For Jobsite work, notwithstanding actual charges to the Contractor for overhead and profit on work performed or furnished to the Contractor by others, no such overhead or profit will be recognized or considered in excess of the allowable percentages specified in Article GC9.3.

(c) Any adjustment in Contract time for completion of the Work shall be in accordance with the requirements of Article GC8.4.2.

GC4.2.2.1 Adjustment in Contract Price

(a) Negotiated Adjustment. The value of any work covered by a Change Order shall be negotiated by the Engineer and the Contractor to determine an equitable adjustment of the Contract Price. An increase or decrease in the Contract Price will be determined in one of the following ways:

(1) Where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities involved in the changed work;

(2) By establishment of new unit prices and related quantities for the changed work where units are not contained in the Contract Documents;

(3) By a combination of existing and new unit prices and related quantities for the changed work; or

(4) By mutual acceptance of a lump sum.

(b) Non-negotiated Adjustment. Where the Engineer and the Contractor cannot negotiate an adjustment of the Contract Price, or the Engineer and Contractor do not agree on pricing for a portion of the Work covered by a Change Order, the District may issue a Change Order based on its good faith estimate of the cost or direct that the work be performed in accordance with the provisions of Article GC9.3 at its discretion.

(c) In the event of failure of a negotiated agreement, the District may, at its option, perform the work by contracting with other entities.

GC4.2.3 Change Orders. The District will issue a Change Order as soon as practical following agreement with Contractor's Change Proposal, or as otherwise provided in these General Conditions. Change Orders shall implement any Change to Contract Documents first proposed in a Change Notice,

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including any modifications thereto agreed upon by the Engineer and the Contractor and approved by the District. If Contractor agrees with the terms and conditions of a Change Order, Contractor shall sign the Change Order and return it to the Engineer. If Contractor disagrees with the terms and conditions of a Change Order, Contractor shall follow the protest procedures set forth in Article GC4.2.4. If the Contractor fails to follow the protest procedures in Article GC4.2.4, the Contractor shall not be entitled to any claim for additional compensation or schedule extension arising out of or relating to the Change other than that specified in the Change Order. Whether or not Contractor has protested the Change Order, Contractor shall promptly proceed with the work as indicated in the Change Order. Contractor shall carry on the Work and adhere to the schedule during all disputes or disagreements with the District. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the District and Contractor may otherwise agree in writing.

GC4.2.3.1 Schedule Extensions. If the Contractor is delayed in completion of the Work by reason of Changes made under this Article, or by District controlled delays as specified in Article GC8.4.2, and if the District agrees with the Contractor that a schedule extension is warranted, a Change Order will be furnished to the Contractor within a reasonable period of time specifying the number of days of time allowed. Any cost changes related to a schedule extension will be determined in accordance with the provisions of Article GC8.4.3.

GC4.2.4 Change Order Protest Procedure. If Contractor disagrees with any terms or conditions set forth in a Change Order described in Article GC4.2.3, Contractor shall sign the Change Order, indicate "protested" adjacent to Contractor's signature, and shall return the signed Change Order to the Engineer within five working days after receipt of such Change Order along with a written protest. The protest shall state the points of disagreement, include any Contract Document references, and shall propose a modification of the items. If a written protest is not submitted within the time period stated, or if the Contractor refuses to sign such Change Order, the Contractor will be deemed to have consented to the terms and conditions set forth in any Change Order which Contractor does not sign or protest within the time period stated. If the District disagrees with the Contractor's protest, Contractor shall follow the claims procedures in Article GC9.4.

GC4.2.4.1 Protests Relating to Compensation. When the protest of a Change Order relates to compensation, the Contractor shall submit to the Engineer information that is in sufficient detail that in the Engineer's judgment, is sufficient to enable the Engineer to determine the compensation payable. The Engineer will consider the Contractor's protest in accordance with the following procedure:

- (a) The Contractor shall furnish, within five working days, following the protest, cost data in writing in sufficient detail to permit a cost analysis of all labor, material, equipment, Subcontract and other direct costs. Such data shall cover all work involved whether such work was deleted, added, changed, delayed, or otherwise affected. Any amounts

requested for Subcontractors shall be supported by a similar cost breakdown. Failure to present such information and details will be sufficient cause for rejecting any protest.

- (b) The Contractor may amend its protest within five working days after the date of original submittal of the protest. Any amendments presented after that time shall be considered only at the option of the District.
- (c) The Contractor shall cooperate with the Engineer to reach agreement at the earliest practical date on the terms of compensation for the Change Order. When agreement has been reached, a revised Change Order will be issued. Unless and until the District and the Contractor agree upon other terms of compensation, the compensation shall be as specified under the protested Change Order.
- (d) If the District disagrees with the Contractor's protest or if Contractor disagrees with the revised terms of compensation, Contractor shall follow the claims procedures in Article GC9.4

GC4.2.4.2 Protest Relating to Delay. When the protest of a Change Order relates to delay, the Contractor shall submit information to the Engineer within five working days of the protest in accordance with the provisions of Article GC8.4.

GC4.2.5 Cancellation. Each Change Order issued in connection with the Contract shall be subject to being cancelled by the District within 30 days after being signed by the Contractor and, in the event of such cancellation, the maximum compensation by the District to the Contractor for reasonable damage, as documented by the Contractor in connection with the Change Order, shall not exceed \$200,000.

GC4.3 Constructive Changes. If the Contractor considers that an action or direction by the Engineer deviates from the Contract requirements or may entitle the Contractor to extra compensation or a time extension, the Contractor shall promptly provide the Engineer with Notice of Potential Claim and shall be governed by the procedures of Article GC9.4.

GC4.4 Exclusive Remedies. The procedures specified in Articles GC4.2, GC4.3, GC8.4, and GC9.4 of these General Conditions are the Contractor's exclusive remedy for actual or constructive changes or delays by the District. No course of conduct or dealings between the parties, no express or implied acceptance of changes or alterations to the Work, and no claim that the District has been unjustly enriched by an alteration or Change to the Work, shall be the basis of any other claim for an increase in Contract Price or extension in the time for completion of the Work.

GC4.5 Increased or Decreased Quantities. For those items identified in the Bid Schedule as unit price bid items, increases or decreases in the quantity of a Contract item of Work will be determined by comparing the total pay quantity of such item of work with the listed estimate of quantities therefor. If the total pay quantity of any item of work required under the Contract varies from the District's Estimate of Quantities therefor by 25

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percent or less, payment will be made for the quantity of work of said item performed at the Contract unit price therefor unless eligible for adjustment pursuant to Article GC4.2, "Changes". If the total pay quantity of any item of Work required under the Contract varies from the District's Estimate of Quantities therefor by more than 25 percent, in the absence of an executed Change Order specifying the compensation to be paid, the compensation payable to the Contractor will be determined in accordance with Article GC4.5.1, GC4.5.2, or GC4.5.3, as the case may be.

GC4.5.1 Increases of More Than 25 Percent.

- (a) Should the total pay quantity of any item of work required under the Contract exceed the District's Estimate of Quantities therefor by more than 25 percent, the work in excess of 125 percent of such estimate and not covered by an executed Change Order specifying the compensation to be paid therefor will be paid for by adjusting the Contract unit price, as hereinafter provided, or at the option of the Engineer, payment for the work involved in such excess will be made on the basis of force account as provided in Article GC9.3.
- (b) Adjustment of the Contract unit price for such excess quantities will be the difference between the Contract unit price and the actual unit cost, which will be determined as hereinafter provided. If the costs applicable to such item of work include fixed costs, such fixed costs will be deemed to have been recovered by the Contractor by the payments made for 125 percent of the District's Estimate of the Quantities for such item, and in computing the actual unit cost, such fixed costs will be excluded. Subject to the above provisions, such 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 Article GC9.3; or such adjustment will be as agreed to by the Contractor and the Engineer.
- (c) When the total compensation payable for the number of units of an item of Work performed in excess of 125 percent of the District's Estimate of Quantities is less than \$5,000 at the applicable Contract unit price, the Engineer reserves the right to make no adjustment in said price if it so elects, except that an adjustment will be made if requested in writing by the Contractor.

GC4.5.2 Decreases of More Than 25 Percent.

- (a) Should the total pay quantity of any item of Work required under the Contract be less than 75 percent of the District's Estimate of Quantities therefor, an adjustment in compensation pursuant to this Article GC4.5.2 will not be made unless the Contractor so requests in writing. If the Contractor so requests, the quantity of said item performed, unless covered by an executed Change Order specifying the compensation payable therefor, will be paid for by adjusting the Contract unit price as hereinafter provided, or at the option of the Engineer, payment for the quantity of the Work of such item performed will be made on the basis of force

account as provided in Article GC9.3, provided however, that in no case shall the payment for such Work be less than that which would be made at the Contract unit price.

- (b) Adjustment of the Contract unit price for such decreased quantities will be the difference between the Contract 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. Such 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 Article GC9.3; or such adjustment will be as agreed to by the Contractor and the Engineer.
- (c) The payment for the total pay quantity of such item of Work will in no case exceed the payment which would be made for the performance of 75 percent of the District's Estimate of Quantities for such item at the original Contract unit price.

GC4.5.3 Eliminated Items.

- (a) Should any Contract item of the Work be eliminated in its entirety, in the absence of an executed Change Order covering such elimination, payment will be made to the Contractor for actual costs incurred in connection with such eliminated Contract item if incurred prior to the date of notification in writing by the Engineer of such elimination.
- (b) If acceptable material is ordered by the Contractor for the eliminated item prior to the date of notification of such elimination by the Engineer, and if orders for such material cannot be canceled, it will be paid for by the District at the actual cost to the Contractor. In such case, the material paid for shall become the property of the District and the actual cost of any further handling will be paid for by the District. If the material is returnable to the vendor and if the Engineer so directs, the material shall be returned and the 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 by the District.
- (c) The actual costs or charges to be paid by the District to the Contractor as provided in this Article GC4.5.3 will be computed in the same manner as if the work were to be paid for in accordance with the provisions of Article GC9.3. There shall be no additional amount added for loss of anticipated profit.

GC4.6 Differing Site Conditions. The Contractor shall immediately upon discovery, and before the conditions are further disturbed, give verbal notice to the Engineer, and confirmed in writing in accordance with Article GC9.4, of:

- (a) Subsurface or latent physical conditions at the site which differ materially from those indicated in the District supplied Contract Documents;
- (b) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily

GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

encountered and generally recognized as inherent in Work of the character provided for in the Contract;

- (c) Material deviations from dimensions, tolerances, conditions or locations of facilities indicated in the District supplied Contract Documents; or
- (d) Material that the Contractor believes may be impacted by contaminated materials which are not already identified in the Contract. As used herein, contaminated materials means material
 - (1) containing a hazardous material in a concentration exceeding residential screening levels established by the Regional Water Quality Control Board - San Francisco Bay Region, the Department of Toxic Substances Control, or the United States Environmental Protection Agency Region 9, or exceeding regional background concentrations if greater than the residential screening level;
 - (2) containing a hazardous material at a level that would require additional personnel protective equipment, medical monitoring, or training in excess of 2 hours to comply with CalOSHA regulations; or
 - (3) meeting the definition of a hazardous waste contained in Section 25117 of the State Health and Safety Code and Title 22 of the California Code of Regulations.

GC4.6.1 Investigation and Notice. The Engineer will promptly investigate such conditions, and if the Engineer finds that they do so materially differ, or do involve such hazardous waste, and cause an increase or decrease in the Contractor's cost of, and/or the time required for, performance of the particular portion of the Work in question, an adjustment will be made in accordance with the change provisions of Article GC4.2. If the Contractor fails to give written notice promptly upon discovery, and before the conditions are further disturbed, the Contractor waives any claim for extra time or extra compensation in any manner arising out of such conditions.

GC4.6.2 Work to Proceed. In the event that a dispute arises between the District and the Contractor as to whether a condition complies with Article GC4.6(a), (b), (c), or (d) above or causes a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the 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 and shall strictly comply with the notice and other claims procedures set forth in Article GC9.4.

GC4.7 Archaeological Discoveries. All articles of archaeological interest which may be uncovered by the Contractor during the progress of the Work shall be reported immediately to the Engineer. The Contractor shall immediately cease all work in the affected area of the archaeological find. Further operations of the Contractor with respect to the find will be as required by the Engineer.

GC4.8 Value Engineering Incentive. The District will pay an incentive for cost savings resulting from Value Engineering Change Proposals (VECPs), which are accepted by the District consistent with the requirements of Article GC4.8.1.

GC4.8.1 Application of VECP. Changes to designs or documents furnished by the Contractor are not eligible for consideration as VECP's. In order to be accepted under this Article, each VECP shall:

- (a) Be identified by the Contractor at the time of submittal to the Engineer as submitted pursuant to this Article;
- (b) Require a change to the Contract;
- (c) Decrease the Contract Price;
- (d) Not alter any item's characteristics such as functionality, service life, reliability, economy of operation, ease of maintenance, and necessary standardized features and appearance;
- (e) Not require an unacceptable extension of Contract time; and
- (f) Not be connected with a prior Contract Change Order resulting from a Contractor's Change Proposal.

GC4.8.2 Content of VECP. Any VECP the Contractor submits shall be in sufficient detail to clearly define the proposed Change including:

- (a) A description of the difference between the existing and the proposed changes to the requirements of the Contract, and the comparative advantages and disadvantages of each;
- (b) Requirements of the Contract recommended to be changed if the proposal is accepted;
- (c) A detailed estimate of the amount of the net savings, as defined in Article GC4.8.4, that will result from acceptance of the proposal;
- (d) A prediction of any effects the proposed Change would have on costs of maintenance and operation; and
- (e) A statement of the time by which the proposal must be accepted so as to obtain the maximum price reduction, noting any effect upon the Contract completion time.

GC4.8.3 Acceptance of VECP. The District may accept or reject part or all of any VECP by giving the Contractor written notice thereof. Until such notice is issued, the Contractor shall remain obligated to perform in accordance with the terms of the Contract. VECPs will be processed expeditiously; however, the District shall not be liable for any delay in acting upon any proposal submitted pursuant to this Article. The decision of the District as to acceptance of any such proposal shall be final. The denial of any VECP shall not provide the Contractor with any basis for claim for damages or delay, nor for release from contractual responsibilities. The District's approval of a value

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engineering proposal shall not entitle the Contractor to additional compensation or time if the work incorporating the proposal is defective, more expensive, or takes more time.

- (a) The Contractor has the right to withdraw part or all of any VECP at any time prior to acceptance by the District. Such withdrawal shall be made in writing to the Engineer. Each VECP submitted by the Contractor shall remain valid for a period of 60 days from the date submitted, unless extended by mutual agreement. If the Contractor desires to withdraw the VECP prior to the expiration of this period, the Contractor shall be liable for the cost incurred by the District in reviewing the VECP.

GC4.8.4 VECP Contract Price Adjustment. When a VECP submitted pursuant to this Article is accepted:

- (a) An equitable adjustment in the Contract Price and in any other affected provisions of the Contract shall be made and the Contract modified by Change Order in accordance with this Article GC4.8, Article GC4.2, or other applicable Articles of the Contract
- (b) The net savings resulting from the Change shall be shared between the Contractor and the District on the basis of 50 percent for the Contractor and 50 percent for the District. Net savings shall be determined by deducting from the estimated gross savings, the Contractor's costs of developing and implementing the VECP, including any amount attributable to a Subcontractor, and the estimated amount of increased costs to the District resulting from the change, such as review, implementation, inspection, related items, DFE, and DFM. Estimated gross savings shall include Contractor's labor, material, equipment, overhead, profit and bond. The Contract Price shall be reduced by the sum of the District's costs and the District's share of the net savings.
- (c) The Contractor is entitled to share in savings on this Contract only, to the full extent provided for in this Article. For purposes of sharing under Article GC4.8.4 (b) above, the Contractor is not entitled to savings associated with any supplemental agreements to or other changes to the Contract related to the VECP.

GC4.8.5 Inclusion in Subcontracts. The Contractor shall include value engineering arrangements in any Subcontract which, in the Contractor's judgment, appears to offer sufficient value engineering potential.

GC4.8.6 Identical VECP. A VECP identical to one submitted under any other contract, by this or by any other contractor, may also be submitted under the Contract, provided that the proposal originated with such Contractor and not with the District.

GC4.8.7 Restrictions. The Contractor may restrict the District's right to use any VECP data by marking it with the following statement:

"This data, furnished pursuant to the Value Engineering Article of the Contract, shall not be duplicated, used or

disclosed, in whole or in part, for any purpose except to evaluate the VECP, unless the proposal is accepted by the District. The restriction does not limit the District's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from another source, without limitations. When this proposal is accepted by the District, the District shall have the right to duplicate, use and disclose any data in any manner and for any purpose whatsoever, and have others do so whether under this or any other Contract."

GC4.9 Guaranty of Work. The Contractor guarantees that the Work and any portion thereof: (a) shall meet the requirements of the Contract, (b) shall be free of defects in material and workmanship, (c) shall be free of defects in design(s) where such design(s) is performed or provided by the Contractor, Subcontractors, or Suppliers, and (d) shall be free of all encumbrances and other rights and interests of third parties. This guaranty shall apply to discrepancies and defects that are discovered within 12 months after the date of Acceptance as set forth in Article GC5.14, or for a portion of the Work, within 12 months after the date the District takes possession of such portion of the Work as set forth in Article GC5.13. If corrective work is performed by the Contractor under this guaranty, the guaranty shall also apply to discrepancies and defects in the corrective work that are discovered within the shorter of 12 months after the corrected work is again placed in operation or 18 months after the corrective work is complete. These guaranty terms shall be extended for any period that a portion of the Work cannot be used for the purpose intended as a result of discrepancies or defects. This guaranty shall apply whether or not designs, data or information have been reviewed or approved by the District or the Engineer, but shall not apply to defects caused by the Work being subjected to conditions substantially more severe than described in the Contract.

GC4.9.1 Defects. The District will notify the Contractor in writing, or by telephone or fax confirmed in writing, on discovery of a discrepancy or defect covered by this guaranty. Within ten days after notice, the Contractor shall propose an acceptable method of correcting the discrepancy or defect which meets all requirements of the Contract and involves the least loss of operating time. The District, in its sole discretion, may select Contractor's proposed method meeting such criteria or any other method of correcting the discrepancy or defect. The District will reimburse the Contractor for any difference in cost to the Contractor between the selected method and the proposed method. In circumstances in which the District determines that it would be inefficient or impractical for the Contractor to perform the corrective work, the District reserves the right to select another firm to perform the corrective work or to complete the work using District forces. Such corrective work by another firm or by District forces shall be at Contractor's expense, provided that Contractor is kept fully informed as to the details and costs of any such corrective work. If the Contractor performs work at the job site under these guaranty provisions, the Contractor shall furnish insurance coverage therefor as specified in the Supplementary Conditions. Prior to beginning such work, the Contractor shall furnish certificates

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satisfactory to the District as to contents and carriers of such insurance.

GC4.9.2 Corrective Work. Unless otherwise required by the District, the Contractor shall commence to perform the corrective work required to satisfy this guaranty within 15 days from the date of written notification. The Contractor shall be aware that work hours may be limited and are subject to BART operations schedules and rules, for which there will be no additional compensation due the Contractor. The Contractor shall at its sole expense perform the corrective work on an overtime and/or shift work basis, and shall procure required materials using the fastest means available when necessary to minimize the District's loss of operating time. The Contractor shall diligently prosecute the corrective work upon commencement and shall complete such corrective work within 60 days from commencement, unless Contractor can demonstrate to the District that completion within such time is commercially impracticable. The Contractor shall perform such tests as the District may require to verify that such redesign, repairs, and replacements comply with the requirements of the Contract Documents. The Contractor shall bear all costs associated with such redesign, repair, replacement, and testing; including the removal, replacement and reinstallation of equipment and materials necessary to gain access.

4.9.3 Replacement Parts. District-owned spare parts shall not be used for warranty purposes. The Contractor shall maintain a sufficient quantity of replacement parts on hand at or near the District repair facility to repair warrantable failures and defects. The security, control, shipping and disposition of Contractor-owned parts shall be the responsibility of the Contractor.

GC4.10 Utilities. The Contractor shall make its own arrangements to obtain and pay for power, water, and other utilities required on a temporary basis for Contractor's operations. The Contractor shall make, extend, maintain, and remove the temporary utilities at Contractor's expense.

GC4.10.1 Maintenance of Utilities. The Contractor shall maintain all Utilities placed by the Contractor in temporary locations, and all Utilities within the construction area not required to be relocated but which are required to be shored or supported during the construction period. Unless otherwise indicated, the cost of such maintenance shall be borne by the Contractor and no other compensation shall be due the Contractor for this work.

GC4.10.2 Rearrangement of Utilities. It is anticipated that some or all of the Utilities, both above ground and below ground, which are required to be rearranged to accommodate the specified work will be rearranged by other forces in advance of the Contractor's operations. As used herein, rearrangement includes installation, relocation, alteration, or removal. Where it is not anticipated that such rearrangement will be performed prior to the start of the Contractor's operations, or where the rearrangement must be coordinated with the Contractor's construction operations, the existing Utilities which are to be rearranged will be indicated in the Contract Documents. Where such a rearrangement is indicated in the Contract Documents,

the Contractor will have no liability for the cost of performing the work; however, the Contractor shall cooperate with those involved in such rearrangement. Wherever necessary, the work of the Contractor shall be coordinated with the rearrangement of Utilities, and the Contractor shall make arrangements with the owner of such facilities for the coordination of the work. The Contractor shall anticipate potential delays by the Utility owners and such delays shall not be the basis for additional compensation or time extensions.

GC4.10.3 Utility Rearrangement for Contractor's Convenience. Should the Contractor desire to have any rearrangement made in any Utility, for Contractor's convenience in order to facilitate construction operations, which rearrangement is in addition to, or different from the rearrangements indicated in the Contract Documents, the Contractor shall make whatever arrangements are necessary with the owners of such Utility for such rearrangement and bear all expenses in connection therewith.

GC4.10.4 Location of Utilities. Attention is directed to the possible existence of Utilities not shown, and Utilities in a location different from that which is Indicated. Contractor shall take steps to ascertain the exact location of all Utilities prior to doing any construction work which may damage such Utilities or interfere with their service. Where the location of a Utility is not Indicated or is doubtful, Contractor at its expense shall make such excavations and explorations as are necessary to ascertain the correct location.

GC4.10.5 Explorations. Where excavations or explorations are directed by the Engineer or where it is determined by the Engineer that the rearrangement of an underground facility, the existence of which is not shown in the Contract Documents, is essential in order to accommodate the Work, the Engineer will provide for the rearrangement of such facility by other forces or, when so ordered by a Change Order, such rearrangement shall be performed by the Contractor and will be paid for as force account work according to Article GC9.3, as determined by the Engineer.

GC4.10.6 BART System Utilities. For the purposes of this Article GC4.10, BART System utilities shall be considered to be Utilities, and shall be rearranged, maintained or located in accordance with the provisions herein.

GC4.10.7 Due Care. When performance of work involves, or takes place in, close proximity to a Utility, the Contractor shall use due care in execution of such work to protect the Utility from damage or disruption of Utility service.

GC4.11 Confidential Information. During the performance of the Work under the Contract, it may be necessary for the District to make confidential technical information available to the Contractor. The Contractor agrees to use all such information solely for the performance of the Work under the Contract and to hold all such information in confidence and not to disclose the same to any third party without the prior written consent of the District. Likewise, the Contractor agrees that all technical information developed in connection with the Work under the

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Contract shall be used solely for the performance of the Work under the Contract, and shall be held in confidence and not disclosed to any third party without the prior written consent of the District.

GC4.11.1 Confidential Technical Information. Confidential technical information shall mean technical information designated by the District as confidential, provided such information does not correspond in substance to information: (a) which was developed by and in possession of the Contractor prior to first receipt from the District; (b) which is now, or hereafter becomes through no act or failure to act on the part of the Contractor, published information generally known on a non-confidential basis; or (c) which heretofore was or hereafter is furnished to the Contractor by a third party as a matter of right without restriction on disclosure.

GC4.12 Ownership of Work Products. All information, including drawings, specifications, software including source code, and other data, prepared or developed by the Contractor in performance of the Work, whether or not required to be furnished to the District, shall be the property of the District and may be used by the District without restriction. Within 30 days after issuance of Certificate of Substantial Completion in accordance with Article GC8.3.2 the Contractor shall provide the District with a list of all such information which has not previously been furnished to the District. The District will then have 30 days to advise the Contractor which information shall constitute District property, at which point it shall be provided to the District. The Contractor shall insert in all Subcontracts the clauses set forth in this Article, and also a clause requiring all Subcontractors to include these clauses in any lower tier Subcontracts.

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ARTICLE GC5

CONTROL OF WORK

GC5.1 Authority of Engineer. The Engineer, under authority from the District, has the responsibility to administer the Contract so that the completion thereof may be accomplished in accordance with contractual requirements. The Engineer's authority is or may be subject to certain monetary or other limits that have been or will be disclosed to the Contractor, and Contract changes exceeding such limits shall require approval of other District personnel. Should, in the opinion of the Engineer, the performance of the Contractor or the quality of Contractor's work, or materials furnished, not meet the standards specified, the Engineer may take or require such measures as the Engineer deems necessary to ensure compliance with contractual requirements.

GC5.2 Contract Drawings. The Contract Drawings show the general arrangement and such details as are necessary to give an idea of the construction contemplated. The District will also furnish as soon as available, and at no expense to the Contractor, Contract Documents in quantities indicated in the Supplementary Conditions.

GC5.2.1 Shop Drawings. The Contract Drawings shall be supplemented by Shop Drawings furnished by the Contractor in accordance with applicable Contract Specifications requirements. Shop Drawings shall be prepared and submitted in accordance with the Contract Specifications.

GC5.3 Conformity to Contract Documents. The Work in all cases shall conform to the lines, grades, cross sections, and dimensions shown on the Contract Documents or approved modifications thereto, and shall be within the tolerances specified, or, if no tolerance is specified, in accordance with industry practice as determined by the Engineer.

GC5.4 Coordination and Interpretation of Contract Documents. The documents comprising the Contract Documents are intended to be complementary, and to describe and provide for a complete Work.

GC5.4.1 Precedence of Documents. The Contract Documents shall govern in the following order of precedence:

- (a) Supplementary Conditions;
- (b) General Conditions;
- (c) Contract Specifications; and
- (d) Contract Drawings.

For the limited purposes specified in Article GC1.6, the Referenced Utility Standards shall govern over the Contract Specifications and the Contract Drawings. As indicated in

Article GC1.5, the Contract Specifications shall prevail over Referenced Standards.

GC5.4.2 Explanations. Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall promptly apply to the Engineer for such further written explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or question arising respecting the true meaning of the Contract Documents, reference shall be made to the Engineer. Failure to apply to the Engineer shall waive any claim by the Contractor arising out of claimed lack of detail or explanation.

GC5.4.2.1 District's Cost. The District reserves the right to charge the Contractor for the District's costs incurred in providing answers that could have been reasonably ascertained by the Contractor.

GC5.4.3 Precedence of Drawings. In case of differences between small and large-scale drawings, the large scale drawings shall govern. Schedules on drawings shall take precedence over conflicting notations on drawings. In the event of discrepancy between any drawing and the figures written thereon, the figures, unless otherwise indicated, shall govern over scaled dimensions.

GC5.4.4 General Terms Regarding District Requirement or Approval. Wherever in the Contract Documents the words "required," "directed," "ordered," "designated," "prescribed" or words of like import are used, it shall be understood that the "requirement," "direction," "order," "designation," or "prescription" of the District is intended and similarly the words "approved," "acceptable," "satisfactory" or words of like import shall mean "approved by," "acceptable to" or "satisfactory to" the District, unless otherwise expressly stated.

GC5.5 Order of Work. When required by the Contract Documents, the Contractor shall follow the sequence of operations set forth therein. Full compensation for conforming to such requirements will be considered as included in the prices paid for the various Contract items of the Work and no additional compensation will be allowed therefor.

GC5.6 Contractor's Representative. The Contractor shall designate in writing, before starting the Work, the name, qualifications, and experience of the Contractor's Representative. Said authorized representative or a substitute acceptable to the Engineer shall be present at the Jobsite at all times while the Work is actually in progress on the Contract. Arrangements for responsible supervision acceptable to the Engineer shall be made for emergency work which may be required during periods when the Work is suspended or site work is intermittent.

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GC5.6.1 Change in Contractor's Representative. The Contractor shall notify the Engineer, in writing, when Contractor desires to change Contractor's Representative, and shall provide all necessary information regarding the new representative for approval by the District.

GC5.6.2 Orders of the Engineer. Whenever the Contractor or Contractor's Representative or a substitute acceptable to the Engineer is not available for a particular part of the Work where the Engineer deems it is necessary to give direction, such direction will be given and shall be received and obeyed by the superintendent or foreman in charge of the particular part of the Work in reference to which the direction is given. Such direction will be confirmed by the Engineer in writing.

GC5.7 Subcontracting. The Contractor is responsible for the fulfillment of the Contract and shall keep the Work under the Contractor's control. No contractual relationship shall exist under the Contract other than the contractual relationship between the District and the Contractor. The Contractor shall be obligated to assist the District in the enforcement of any rights, including those under equipment warranties, that the District has against any Subcontractor. Any claim or Change Proposal by Contractor for additional compensation or schedule extension based on a Subcontractor's claim or Change Proposal shall be passed on to the District for review only after an independent review and determination by Contractor that such Subcontractor's claim or Change Proposal has merit under the terms and conditions of the Contract and Subcontract. Contractor shall provide on District supplied form, written certification that it has independently reviewed and determined that the Subcontractor's claim has merit. Any such claims shall be submitted in accordance with Article GC9.4. Contractor shall require that each Subcontract contain language conveying the provisions of the General and Supplementary Conditions, throughout Subcontracts of any tier.

GC5.7.1 Designation of Subcontractors. The Contractor shall comply with the requirements of the Subletting and Subcontracting Fair Practices Act, State Public Contract Code Sections 4100 *et seq.*, concerning listing of Subcontractors by all persons submitting bids for public work. As used in this Article GC5.7.1, "Subcontractors" shall include only those Subcontractors which have an employee or employees at the Jobsite who fall within one or more of the classifications contained in the applicable prevailing rate of wages in the locality in which the Work is to be performed, and shall exclude the Contractor or any Subcontractor whose only employees at the Jobsite are engaged solely in the delivery of materials.

GC5.7.1.1 Requirement for Designation. Contractor shall have set forth on the form provided in the Bid Form, the name and location of the place of business of each Subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the Work, or a Subcontractor licensed by the State of California who specially fabricates and installs a portion of the Work according to detailed drawings contained in the Contract Documents, in an amount in excess of one-half of one percent of the total amount of the Contractor's Bid, and the portion of the Work which will be done by each

such Subcontractor. The Contractor shall not, without the written consent of the District, either substitute any Subcontractor in place of the Subcontractor designated in the original Designation of Subcontractors, or permit any such subcontract to be assigned or transferred, or allow it to be performed by anyone other than the original Subcontractor listed in the Designation of Subcontractors, or sublet or subcontract any portion of the Work in excess of one-half of one percent of the total amount of Contractor's Bid for which Contractor did not originally designate a Subcontractor other than in the performance of Change Orders causing changes or deviations from the original Contract. District consent for the substitution of Subcontractors will be given only in accordance with State Public Contract Code Section 4107. If the Contractor violates any provision of said Subletting and Subcontracting Fair Practices Act, it shall be liable for the penalty and disciplinary action stated therein. In addition to the requirement to obtain the written consent of the District, the Contractor shall notify the subject Subcontractor of the Contractor's intention to substitute a Subcontractor in place of the designated Subcontractor and shall furnish acceptable evidence of that notification to the Engineer.

GC5.7.1.2 District Not Liable. The District shall not be liable for either delay in determining whether to consent to any such substitution (including, but not limited to, proposals by the Contractor that it accomplish, with its own forces, work for which a Subcontractor is listed) or for failure to give such consent. Contractor shall defend, hold harmless and indemnify the District and its directors, officers, representatives, agents, consultants, and employees from and against any and all liability arising out of or in any way attributable to a consent to a substitution requested by the Contractor.

GC5.7.2 Replacement of Subcontractor. When a portion of the Work which has been subcontracted by the Contractor is not prosecuted in accordance with the Contract, the Subcontractor shall be replaced on request of the Engineer and shall not again be employed on the Work. Any such replacement shall be undertaken in accordance with California Public Contract Code Section 4100 *et seq.*

GC5.7.3 On-Site Production of Materials. The on-site production of materials produced by other than the Contractor's forces shall be considered as subcontracted. The erection, establishment, or reopening of on-site plants for production of materials and the operation thereof in the production of said materials for use on the Work shall conform to the requirements relating to labor and insurance set forth in the Contract Documents.

GC5.7.4 Subcontracts. The Contractor shall furnish copies of all Subcontracts to the Engineer.

GC5.8 Assignment. The Contractor shall not assign all or any part of its rights under the Contract to any other person or other legal entity. The Contractor may assign monies due or to become due under the Contract and such assignment will be recognized by the District, if given proper notice thereof, to the extent permitted by law, but any assignment of monies shall be

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subject to all proper set-offs in favor of the District and to all deductions provided for in the Contract.

GC5.9 Equipment and Plants. The Contractor shall use or permit only equipment and plants meeting requirements of the State Department of Industrial Relations, Safety Orders, and suitable to produce the quality of work and materials required on the project.

GC5.9.1 Plants. Plants shall be designed and constructed in accordance with good practice for such equipment and shall be of sufficient capacity to ensure the production of materials needed to complete the Work in accordance with the Contractor's schedule.

GC5.9.2 Unsafe Equipment. When ordered by the Engineer, the Contractor shall immediately remove unsafe or unsuitable equipment from the Work, shall be solely responsible for any liability resulting from use of said equipment, and shall perform such removal at the Contractor's sole expense.

GC5.9.3 Use of BART System. The Contractor shall obtain written permission from the Engineer prior to operating any equipment or vehicles on, over or adjacent to the BART System. The Contractor shall provide sufficient notice to the Engineer in accordance with the District's requirements for granting such permission so as not to delay the Work.

GC5.10 Replacement of Workers. If, in the Engineer's opinion, an employee of the Contractor or an employee of a Subcontractor appears to be unqualified, performing work in an unsuitable manner, acting in a disorderly or reckless manner, or violating BART's safety or security policies, the Contractor, if the Engineer so requests, shall at its own expense promptly cause such person to be replaced by a suitably qualified person and shall not again be employed on the Work.

GC5.11 Inspection. The Engineer shall at all times have access to the Work and the Contractor shall furnish every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of the Contract Documents. All work done and all materials furnished shall be subject to the Engineer's on-site and off-site inspection and approval. When Work is to be performed during hours other than Contractor's normal schedule, the Contractor shall advise the Engineer not less than 24 hours in advance. The Contractor shall give the Engineer 24-hour written advance notice of Contractor's intention to cover Work. Failure of the Contractor to provide such 24-hour written advance notice will result in the Contractor being required to uncover such covered work at Contractor's expense.

GC5.11.1 Contractor Inspection. The Contractor shall inspect all materials, supplies and equipment that are to be used, consumed or incorporated in the Work. In addition, Contractor shall conduct a continuous program satisfactory to the Engineer of construction quality control for all Work performed under this Contract. The Contractor shall have the primary responsibility for inspecting the Work and materials; the Engineer's inspection is conducted to verify that the Contractor has performed its

inspections properly. Any observation, verification, inspection, or approval of the Work or materials by the District shall not relieve the Contractor of any of Contractor's obligations to fulfill the Contract as prescribed. If, in the opinion of the Engineer, the Contractor fails to execute its responsibility for quality control and inspection on any part of the Work, the District may, at its option, conduct quality control and inspection activities in lieu of the Contractor at the Contractor's expense. Such inspection shall not relieve the Contractor of its liability for defective or unsuitable work as described in GC4.9.1. Work and materials not meeting the requirements of the Contract shall be made acceptable, and unsuitable work or materials may be rejected, notwithstanding that payment for such Work or materials may have been previously authorized and included in a progress payment. A deduction may be made from subsequent progress payments and withheld until such time as the correction of such unsuitable work or materials is made. The amount of the deduction will be set by the Engineer.

GC5.11.2 Uncovering of Work. Re-examination of questioned Work may be ordered by the Engineer at any time before Acceptance. If so ordered, the Work shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the District will pay, as governed by the force account procedures in Article GC9.3, for the cost of testing and of uncovering or removing and replacing of the covering or making good of the parts removed. If such Work so exposed or examined is not in accordance with the Contract Documents, the testing and uncovering or removal, replacement, and recovering shall be at the Contractor's expense.

GC5.12 Removal of Rejected and Unauthorized Work. All work which has been rejected shall be promptly remedied, or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed to the Contractor for such removal, replacement, or remedial Work.

GC5.12.1 Unauthorized Work. All work done beyond the lines and grades shown on the Contract Drawings or established by the Engineer, and all work done without written authorization will be considered as unauthorized Work. Upon order of the Engineer, unauthorized work shall be remedied, removed, or replaced at the Contractor's expense.

GC5.12.2 Failure to Remedy. Upon failure of the Contractor to remedy, to remove, or to replace rejected or unauthorized work, or to comply promptly with any order of the Engineer made under this Article GC5.12, the Engineer may cause rejected or unauthorized Work to be remedied, removed, or replaced by others and deduct the costs thereof from any monies due or to become due the Contractor.

GC5.13 Possession Prior to Acceptance

GC5.13.1 Possession of Portions of the Work. At the request of the Contractor to the Engineer and subject to inspection and approval by the Engineer, the District may by written notice take possession of certain portions of the Work as described in Article GC5.13.2 which have been completed in all respects in accordance with the requirements of the Contract Documents

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prior to Acceptance. Such possession by the District shall relieve the Contractor of the duty of maintaining and protecting such portions of the Work and thereafter, except with the Contractor's consent, the Contractor shall not be required to perform further work thereon. In addition, such action by the District shall relieve the Contractor of responsibility for injury or damage to said completed portions of the Work resulting from use by public 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 nor from Contractor's negligence.

GC5.13.2 Relief from Maintenance. Portions of the Work for which the Contractor may be relieved of the duty of maintenance and protection as provided in Article GC5.13 may include, but are not limited to, the following:

- (a) One or more structures.
- (b) A complete unit of trackway work.
- (c) A complete unit of road relocation or reconstruction work.
- (d) Non-Transit Facilities constructed for and accepted by other agencies.

GC5.13.3 Contractor's Responsibility. Possession of the Work under this Article GC5.13 shall not relieve the Contractor of full responsibility for repairing or replacing defective work or materials in accordance with the requirements of the Contract. Relief of the Contractor under this Article shall not constitute Acceptance.

GC5.14 Final Inspection and Acceptance When the Work has been completed, the Engineer will make the Final Inspection. When the Engineer determines upon Final Inspection that the Work has been completed in all respects and all required Contract Documents, Contract Drawings, warranties, certificates, manuals, and data have been submitted and training completed in accordance with the Contract Documents, the Engineer will recommend that the District formally accept the Work. The District will then execute a written notice of Acceptance of the Work which shall be recorded forthwith by the District. After recordation, the Acceptance shall forthwith be transmitted to the Contractor.

GC5.14.1 Relief from Duty. Immediately upon and following Acceptance by the District pursuant to Article GC5.14, the Contractor shall be relieved of the duty of maintaining and protecting the Work as a whole, and will not be required to perform any further work thereon except as provided in Article GC4.9, Guaranty of Work; and the Contractor shall be relieved of Contractor's responsibility for injury to persons or property or damage to the Work which occurs after the formal Acceptance by the District, except that the Contractor shall not be relieved of Contractor's responsibility for injury to persons or property arising from the Contractor's duties and obligations under Article GC7.13.

GC5.15 Payment After Acceptance. After the Work has been accepted by the District as provided in Articles GC5.13 and

GC5.14, payments will be made to the Contractor subject to and in accordance with the payment provisions in Articles GC9.7 and GC9.8.

GC5.16 Correspondence. Contractor's correspondence with the District shall be formatted and serialized in accordance with instructions provided by the Engineer.

GC5.17 Rights in Land and Improvements. The Contractor shall make no arrangements with any person or entity to permit occupancy or use of any land, structure, or building within the limits of the Jobsite, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the District and any owner, former owner, or tenant of such land, structure, or building. Further, the Contractor shall make no arrangements for any entry or occupancy of land, structure or building within the limits of the parcels obtained by the District for use by the Contractor, without prior approval from the Engineer.

GC5.17.1 Jobsite Limits. The Contractor shall not occupy District-owned property outside the limit of the Jobsite as shown on the Contract Drawings or on maps available from the District unless the Contractor obtains prior approval from the Engineer.

GC5.18 Cooperation with Other Forces. The Contractor shall not have the sole right to occupy the Jobsite during the performance of the Work, but such right is reserved to the District and the owners of Non-Transit Facilities, or their authorized agents to enter upon the BART System right-of-way for the purpose of making such changes as are necessary for the rearrangements of their facilities or for making necessary connections or repairs to their facilities. Should construction be underway by the District, the owners of Non-Transit Facilities, their authorized agents, or other forces within or adjacent to the limits of the Work or should activities of any other nature be underway by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other forces to the end that any delay or hindrance to their activities shall be minimized. The District reserves the right to perform other or additional work at or on the site at any time, by the use of other forces. If the Contractor is delayed by others, immediate notification shall be made in writing to the Engineer. The Contractor shall mitigate and minimize any such delay by other forces.

GC5.18.1 Hindrance and Damage. When other forces are employed on related or adjacent District work, the Contractor shall conduct its operations in such manner as to cause the least possible delay and hindrance to the other forces. The Contractor shall be responsible to the District for all damage to the Work, persons, and property caused to other forces by Contractor's operations, for loss to other forces caused by Contractor's unnecessary delays, and for failure to finish the Work within the time specified for completion.

GC5.18.2 Defect Report. If any part of the Contractor's work depends for proper execution or results upon existing conditions or the work of other forces, the Contractor shall report to the Engineer, before using the work, all reasonably discernable defects found in such work that render it unsuitable for the

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Contractor's work. Such report shall be in writing, documenting such defects on the District provided non-conformance report and shall be submitted within 30 days of being granted access to the Work. Failure of the Contractor to report such defects shall constitute an acceptance of the other forces' work as fit and proper for the execution of the Contractor's work and shall preclude any claim for additional compensation or schedule extension for uncovering the Work or correcting defects, except for defects in the other force's work which are latent and not reasonably discernible. Any claim for additional compensation based on defective work of others found under this Article GC5.18 shall be governed by the claims procedures of Article GC9.4.

GC5.19 District's Use Prior to Acceptance. Upon written notice, the District shall have the right to use any completed or partially completed part of the Work prior to Acceptance. Upon the District's making such use, the Contractor shall be relieved of the responsibility for loss or damage to that portion of the Work under District use other than loss or damage resulting from the Contractor's fault or negligence.

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ARTICLE GC6

CONTROL OF MATERIALS

GC6.1 Source of Supply and Quality of Materials. The Contractor shall furnish all materials, including without limitation equipment and completely or partially assembled items, required to complete the Work, except materials which are designated in the Contract Documents to be furnished by the District.

GC6.1.1 Conforming Materials. Notwithstanding any prior inspection or approval, only materials conforming to the requirements of the Contract Documents shall be incorporated in the Work.

GC6.1.2 Manufacturers' Warranties and Product Data. Manufacturers' warranties, guaranties, instruction sheets, material safety data sheets, and parts lists, which are to be furnished with certain materials, shall be delivered to the Engineer before Acceptance. Contractor shall cause all manufacturers' warranties and guaranties provided with any goods or services included in the Contract to be given directly in favor of the District.

GC6.2 District-Furnished Materials (DFM) and District-Furnished Equipment (DFE). DFM and DFE will be available at locations designated in the Contract Documents or if not designated in the Contract Documents they will be delivered to the Jobsite or at the site designated by the Contractor. Such DFM and DFE shall be hauled to and properly stored at the place of use by the Contractor at Contractor's expense, including all necessary loading and unloading which may be involved. All costs of storing, handling, and installing DFM and DFE shall be considered as included in the Contract Price paid for the item involving such DFM and DFE. DFM and DFE will be furnished at no cost to the Contractor unless otherwise specified.

GC6.2.1 Contractor's Liability for DFM and DFE. The Contractor shall be responsible for all DFM and DFE and shall pay all demurrage and storage charges. If any DFM or DFE is lost or damaged from any cause whatsoever after receipt by the Contractor, the Contractor shall be liable to the District for the cost of replacing or repairing such DFM or DFE and the costs thereof may be deducted from any monies due or to become due the Contractor.

GC6.3 Defective Materials. All Contractor-furnished materials not conforming to the Contractor's guaranty as set forth in Article GC4.9 will be rejected, whether in place or not. They shall be removed immediately from the Jobsite unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work unless approval in writing has been given by the Engineer. Upon failure of the Contractor to comply promptly with any order of the Engineer made under the provisions in this Article GC6.3, the Engineer may cause the removal and replacement of rejected materials and deduct the cost thereof from any monies due or to become due the Contractor.

GC6.4 Trade Names and Alternatives. For convenience in designation on the Contract Drawings or in the Contract Specifications, certain articles or materials to be incorporated in the Work may be designated under trade names or the names of manufacturers and their catalog information. Except in those instances where the product is a DMP designated to match others in use in a particular improvement either completed or in the course of completion, the use of an alternative article or material which the Contractor represents to be of at least equal quality and of the required characteristics for the purpose intended will be permitted, subject to each of the following requirements:

- (a) The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor and the Contractor shall furnish all information necessary, including samples, as required by the Engineer at no additional cost to the District. The Engineer shall be the sole judge as to the quality and suitability of alternative materials and the Engineer's decision shall be final.
- (b) Where use of an alternative material involves redesign of or changes to other parts of the Work, the cost and the time required to effect such redesign or changes will be considered in evaluating the suitability of the alternative material. The Contractor shall bear the cost of any required redesign and time impacts resulting from the acceptance of the use of alternative materials.
- (c) No tests nor action relating to the approval of substitute materials will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the materials proposed. Such request shall be made in ample time to permit approval without delaying the Work. Request for substitution shall be made for all proposed substitutions but such request must be made within 40 days of Award, unless a longer period is granted by the District.
- (d) Whenever classification, rating, or other certification by a body such as Underwriter's Laboratory (UL), National Electric Manufacturer's Association (NEMA), or American Railway Engineering and Maintenance of Way (AREMA) is a part of the specification for any material, proposals for use of alternative materials shall be accompanied by reports from the listed or equivalent independent testing laboratory indicating compliance with specification requirements.
- (e) The cost of all testing required to prove equality of the material proposed shall be borne by the Contractor.
- (f) Approval of an alternative material shall be only for the characteristics or use named in such approval, and shall not be used to change or modify any requirements of the

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Contract, or to establish approval for material to be used on any other portion of the Work.

GC6.4.1 Responsibility for Performance. Designation of brand names, components and/or equipment in the Contract Specifications shall not relieve the Contractor from responsibility for performance in accordance with the requirements of the Contract. The Contractor is responsible for notifying the Engineer of any inappropriate brand name, component and/or equipment that may be called for in the Contract Specifications and to propose a suitable substitute for consideration. Any substitution required by the District or the Engineer under this Article shall be implemented in accordance with the procedures for Change Notices set forth in Article GC4.2.

GC6.5 Plant Inspection. The Contractor shall submit to the Engineer a list of Supplier's sources of materials. The Engineer may inspect the production of material, or the manufacture of products at the source of supply, herein referred to as the plant. Plant inspection, however, will be undertaken with the cooperation and assistance of both the Contractor and the material producer or product manufacturer. The Engineer or the Engineer's authorized representative shall have reasonable entry at all times to such parts of the plant as concern the manufacture or production of the materials, including those involved with testing and shipping. Adequate facilities shall be furnished by the Contractor free of charge to make the necessary inspection. The Contractor shall include appropriate language that obtains acceptance of these District plant inspection rights in its Subcontracts. The failure of the Contractor or its Subcontractors to allow the Engineer to perform plant inspections may result in rejection of the material or products at no additional cost to the District or extension of Contract completion time. The Engineer assumes no obligation for plant inspection. The responsibility for incorporating satisfactory materials in the Work rests entirely with the Contractor, notwithstanding any District plant inspections.

GC6.5.1 Reinspection. If the plant inspection by the Engineer cannot be satisfactorily completed during the scheduled plant inspection visit due to actions or omissions by the Contractor or its Subcontractor, or the plant inspection results in rejection of the inspected material or products, and reinspection is required, the cost of additional inspection visits or reinspections shall be borne by the Contractor.

GC6.6 Property Rights in Materials. Contractor shall have no property right in the materials used after they have been attached or affixed to the Work or existing real property, or after payment has been made for 90 percent of the value of materials delivered to the Jobsite, or stored subject to or under the control of the District. Title to all such materials shall pass to the District and such material shall become the property of the District upon being so attached or affixed or upon payment of 90 percent of the value of materials delivered to the Jobsite or stored subject to or under the control of the District, as provided in Article GC9.7, whichever occurs earlier.

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ARTICLE GC7

COMPLIANCE AND LIABILITY

GC7.1 Laws To Be Observed. The Contractor shall keep fully informed concerning all governmental requirements, including but not limited to all State, federal, county and municipal laws, 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 the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same including the specific legal requirements referenced in the Contract Documents. The Contractor shall at all times observe, and shall cause all Contractor's agents, employees and Subcontractors to observe all such governmental requirements, and shall indemnify, defend and hold harmless the District and all of its directors, officers, agents, and employees against all claims, liabilities, losses, damages and expenses (including attorneys' fees and related costs) arising from or based on the violation of any such governmental requirement whether by the Contractor or Contractor's agents, employees or Subcontractors. The District will not recognize any claim for additional compensation because of the need to comply with this provision and all applicable changes to State, Federal, county and municipal laws, ordinances and regulations. If any discrepancy or inconsistency is discovered in the Contract Documents for the Work in relation to any such governmental requirements, the Contractor shall immediately report the same to the Engineer in writing.

GC7.1.1 Hours of Labor. The Contractor shall forfeit, as penalty to the District, \$50 for each worker employed in the performance of the Contract by the Contractor or by any Subcontractor for each calendar day during which such 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 provisions of the State Labor Code and in particular, Sections 1810 to 1815 thereof, inclusive, except that work performed by employees of the Contractor 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 said Section 1815.

GC7.1.1.1 Record of Labor. The Contractor shall keep an accurate record showing the names of and actual hours worked each calendar day and each calendar week by each worker employed by it in connection with the public work as required by Section 1812 of the State Labor Code. The record shall be kept open at all reasonable hours for inspection by either the District or the Division of Labor Standards Enforcement.

GC7.1.2 Fair Employment Practices: State Fair Employment and Housing Act.

GC7.1.2.1 Section 1735 of the State Labor Code. The Contractor shall comply with Section 1735 of the State Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all penalties imposed for a violation of this chapter."

GC7.1.2.2 State Fair Employment and Housing Act. The Contractor shall comply with the State Fair Employment and Housing Act (State Government Code Sections 12900 through 12996), and the regulations promulgated by the State Fair Employment and Housing Commission to implement said Act.

GC7.1.2.3 Nondiscrimination. In the performance of the Contract, Contractor agrees that it shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation or age in any manner prohibited by law. For purposes of this Article, "sexual orientation" shall mean a preference for heterosexuality, homosexuality or bisexuality; or having a history of or being identified with, any such preference. Contractor shall take affirmative action to ensure that applicants are hired and that employees are treated during employment in accordance with this non-discrimination obligation. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Article.

GC7.1.2.4 Access to Contractor's Records. Contractor shall permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission for the purpose of investigation to ascertain compliance with the State Fair Employment and Housing Act.

GC7.1.2.5 Violation of the State Fair Employment and Housing Act. Upon finding a violation of the State Fair Employment and Housing Act by Contractor, or a finding in a final judgment by a court of competent jurisdiction in an action to which Contractor is a party, that Contractor has unlawfully discriminated against any employee or applicant for employment on any of the grounds set out in Article GC7.1.2.3, the District will notify Contractor that unless it demonstrates to the satisfaction of the District within a stated period that the violation has been corrected, Contractor's right to proceed with the Work may be suspended or terminated, in whole or in part, pursuant to Articles GC8.4.4 and GC8.8, respectively. The

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District will deem a finding of violation of the State Fair Employment and Housing Act to have occurred in performance of this Contract upon receipt of written notice from the State Fair Employment and Housing Commission that it has investigated and determined that Contractor has violated the State Fair Employment and Housing Act in performance of this Contract, and that said Commission has issued a final order under State Government Code Section 12970 or obtained a final judgment under State Government Code Section 12973; provided, however, that for purposes of this Fair Employment Practices Article, a judgment, order or injunction shall not be considered final: (a) if, and for the period that, the same is stayed or subject to further administrative or judicial review, or (b) if the same is vacated, reversed or set aside in whole or in substantial part as a result of subsequent administrative or judicial proceedings.

GC7.1.2.6 Provisions for Fair Employment Practices. Contractor shall include, and shall cause all Subcontractors to include, the provisions of this Fair Employment Practices Article GC7.1.2 in every Subcontract entered into related to the Contract.

GC7.1.3 Prevailing Wage. Contractor and each Subcontractor shall pay to all workers employed on the Work not less than the prevailing rate of wages as determined in accordance with the State Labor Code as indicated herein.

GC7.1.3.1 State Labor Code. Contractor shall comply with State Labor Code Sections 1774 and 1775. In accordance with said Section 1775, Contractor shall forfeit as a penalty to the District not more than \$50 for each calendar day or portion thereof for each worker paid less than the prevailing wage rates stipulated in the Invitation to Bidders for such work or craft in which such worker is employed for any Work done under the Contract by Contractor or by any Subcontractor under the Contract (in violation of the provisions of the State Labor Code and, in particular, State Labor Code Sections 1770 to 1780, inclusive). The amount of forfeiture shall be determined by the Labor Commissioner based on specified factors pursuant to said Section 1775. In addition to said penalty and pursuant to said Section 1775, the difference between such stipulated 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 stipulated prevailing wage rate shall be paid to each worker by the Contractor.

GC7.1.3.2 Section 1773 of the State Labor Code. Pursuant to the provisions of Section 1773 of the State Labor Code, the District has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided for in Section 1773.8 of said Code, apprenticeship or other training programs authorized by Section 3093 of said Code, and similar purposes) applicable to the Work to be done, for straight time, overtime, Saturday, Sunday, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker concerned. Copies of the prevailing rates of wages are on file at the Office

of the District Secretary, 800 Madison Street, Oakland, California, 94607 and will be furnished to the Contractor and other interested parties on request. For crafts or classifications not shown on the general wage prevailing wage determinations, Contractor may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for Contract work.

GC7.1.3.3 Posting of Prevailing Wage Rates. A copy of the prevailing rates of wages shall be posted in a prominent place at each Jobsite by the Contractor.

GC7.1.3.4 Travel and Subsistence Payments. The Contractor shall make travel and subsistence payments to each worker needed to execute the Work in accordance with the requirements in Section 1773.8 of the State Labor Code.

GC7.1.3.5 Payroll Records.

(a) The Contractor shall comply with the provisions of State Labor Code Sections 1776 and 1812, and shall be responsible for compliance by its Subcontractors. The penalties specified in subdivision (f) of State Labor Code Section 1776 for noncompliance may be deducted from any monies due or which may become due to the Contractor.

(b) A certified copy of payroll records provided for in State Labor Code Section 1776 shall be furnished to the Engineer each week.

GC7.1.3.6 Claim for Additional Compensation. The District will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining its Bid, and will not under any circumstances be considered as the basis of a claim against the District on the Contract.

GC7.1.4 Contractors Licensing Laws. The Contractor shall comply with the provisions of Chapter 9 of Division 3 of the State Business and Professions Code concerning the licensing of contractors. All Bidders and Contractors shall be licensed in accordance with the laws of the State of California and any Bidder or Contractor not so licensed is subject to the penalties imposed by such laws.

GC7.1.5 Apprentices. The Contractor shall fully comply with the requirements of Section 1777.5 of the State Labor Code and the regulations of the California Apprenticeship Council. In accordance with Section 1777.5, the Contractor shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. The Contractor shall require each Subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the Work to comply fully with Section 1777.5. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the Director of Industrial Relations, from the office of Administrator of Apprenticeship, State Building Annex, 455 Golden Gate Avenue, San Francisco,

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or from the State Division of Apprenticeship Standards and its branch offices. It is District policy to encourage the employment and training of as many apprentices on District contracts as may be permitted under applicable apprenticeship standards.

GC7.1.6 Accessibility. Contractor and Subcontractors shall observe all laws related to Accessibility including but not limited to:

- (a) The Americans with Disabilities Act of 1990 (ADA) 42 USC § 12101 et seq. and amendments and regulations issued pursuant thereto;
- (b) California Building Code, Chapter 11 (formerly California Code of Regulations (CCR) Title 24, Part 2); and
- (c) Where the ADA and CCR differ, the more stringent of the two standards shall be applied.

GC7.2 Weight Limitations. Unless expressly permitted in the Contract Specifications, the Contractor shall not operate construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limits set forth in Division 15 of the Vehicle Code, over completed or existing base, surfacing, pavement, or highway structures in any area within the limits of the project.

GC7.3 Payment of Taxes. The Contract Prices paid for the Work shall include full compensation for all taxes which the Contractor is required to pay whether imposed by Federal, State or local government, including, without limitation, Federal excise taxes, whether or not the laws, regulations, orders and judgments respecting such taxes are changed following submission of the Contractor's Bid or execution of the Contract. The Contractor shall promptly pay such taxes when and as they become due, and shall indemnify, defend and hold harmless the District and all of its directors, officers, agents, consultants, and employees against any claims, losses, liabilities, penalties, interest, damages or expenses (including attorneys' fees and related costs) resulting from failure by the Contractor or its Subcontractors and vendors to pay such taxes or comply with the applicable tax laws. The District will not furnish any tax exemption certificate nor sign any document designed to exempt the Contractor from payment of any tax.

GC7.4 Permits and Licenses. Except as may be otherwise indicated in the Supplementary Conditions, the Contractor shall procure all necessary permits and licenses, pay all charges and fees, comply with all permit conditions and give all notices necessary and incident to the due and lawful prosecution of the Work. Failure of the Contractor to perform any of the requirements specified herein shall result in the Contractor's liability as set forth in Article GC8.7.

GC7.5 Patents. The Contractor shall assume all risks arising from the use of patented materials, equipment, devices, or processes, not furnished by the District, used on or incorporated in the Work and shall indemnify, defend and hold harmless the District, and all of its directors, officers, employees and agents to the maximum extent permitted by law from and against any

and all claims, liabilities, losses, damages or expenses (including attorneys' fees and related costs), whether direct or indirect, arising out of or relating to the ownership, possession or use of any patented materials, equipment, devices or processes. In case such materials, equipment, devices or processes are held to constitute an infringement and their use enjoined, the Contractor at Contractor's expense shall: (a) secure for the District the right to continue using said materials, equipment, devices or processes by suspension of the injunction or by procuring a license, or licenses, or (b) replace such materials, equipment, devices, or processes with noninfringing materials, equipment, devices or processes, or (c) modify them so that they become noninfringing or remove the enjoined materials, equipment, devices or processes and refund the sums paid therefor without prejudice to any other rights of the District or the Engineer.

GC7.5.1 Copyrights. The Contractor shall assume all risks arising from the use of copyrighted materials, or software, not furnished by the District, used on or incorporated in the Work and shall indemnify, defend and hold harmless the District, and all of its directors, officers, employees and agents to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages or expenses (including attorneys' fees and related costs), whether direct or indirect, arising out of or relating to the ownership, possession or use of any copyrighted materials or software. In case such materials or software are held to constitute an infringement and their use enjoined, the Contractor at Contractor's expense shall: (a) secure for the District the right to continue using said materials or software by suspension of the injunction or by procuring a license, or licenses, or (b) replace such materials or software with noninfringing materials or software; or (c) modify them so that they become noninfringing or remove the enjoined materials or software and refund the sums paid therefor without prejudice to any other rights of the District.

GC7.6 Safety and First Aid Requirements. The Contractor shall promptly and fully comply with and carry out, and shall without separate charge therefor to the District enforce compliance with the safety and first aid requirements stated in the Contract Documents, prescribed by applicable laws and regulations and those prescribed by any official or representative charged with the enforcement thereof. The Contractor shall take such other measures as may be necessary to the end that work shall be done in a safe manner and that the safety and health of the employees and the people of local communities is safeguarded. Compliance with the provisions of this Article GC7.6 by Subcontractors shall be the responsibility of the Contractor.

GC7.6.1 Regulatory Compliance. The Contractor shall cause the Work to be performed in accordance with State Code of Regulations, Title 8 Industrial Relations, and Title 24 State Building Standards, as applicable.

GC7.6.2 Working Conditions. It is a condition of the Contract, and shall be made a condition of each Subcontract entered into pursuant to the Contract, that the Contractor and any Subcontractor shall not require any laborers, mechanics, crafts, trades or others employed in performance of the Contract

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to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to workers' health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1926 - as amended from time to time) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act.

GC7.6.3 Excavation Safety. In advance of any excavation of 5 feet or more in depth, the Contractor shall submit to the Engineer for approval a detailed plan and calculations showing the design of shoring, bracing, sloping and other provisions to be made for worker protection from the hazard of caving ground during the excavation. The excavation plan shall include such measures as required to prevent ground movement hazards to facilities and the public. If such plan varies from the shoring system standards established by the CAL/OSHA Construction Safety Orders, the plan shall be prepared and sealed by a California registered civil or structural engineer. No review or approval by the District or the Engineer shall be deemed to allow the use of a shoring, sloping or protective system less effective than that required by the CAL/OSHA Construction Safety Orders. No review or approval by the District or the Engineer shall be construed to impose tort liability on the District, the Engineer or any of their directors, officers, agents, consultants, and employees, or to relieve the Contractor of its obligation to comply with all applicable laws and safety rules.

GC7.6.4 Fire Protection. Contractor shall provide necessary equipment and exercise caution to prevent and protect against fires during the performance of Work. Contractor shall conform to the requirements of the local fire department. All construction equipment shall be properly muffled as specified in the State Vehicle Code.

GC7.6.5 Stop Orders. Upon the failure of the Contractor to comply with any of the requirements of this Article GC7.6, the District shall have the authority to stop any or all operations of the Contractor affected by such failure until such failure is remedied. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time or for increased costs or damages by the Contractor.

GC7.6.6 Site Security and Access. Prior to commencement of Work, Contractor shall comply with BART's site security requirements which include, but are not limited to, requiring photographic identification badges and submitting names and dates of birth of all personnel, including subcontractors and suppliers of any tier, working on BART property or facilities. All badges shall be returned to BART at the completion of Work hereunder. In the event Contractor fails to comply with BART's site security requirements, Contractor's personnel, including subcontractors and suppliers, may not be allowed on the Jobsite. No extension of time for completion of Work or additional compensation for delay claims shall be granted in the event such personnel are excluded from the Jobsite.

GC7.7 Sanitary Provisions. The Contractor shall conform to the rules and regulations pertaining to sanitary provisions established by the State, and to county, city and municipal laws

and ordinances as may be applicable. Toilets for use of employees on the Work shall be furnished where needed and shall be maintained by the Contractor. Their use shall be strictly enforced.

GC7.8 Public Convenience. The Contractor shall so conduct its operations as to offer the least possible obstruction and inconvenience to the public, and Contractor shall have under construction no greater length or amount of work than the Contractor can prosecute properly with due regard to the rights of the public.

GC7.9 Interference with Public Traffic. The Contractor shall comply with the requirements specified in the Contract Specifications applicable to traffic control and obstructions of the public roadway.

GC7.10 Environmental Compliance. The Contractor shall comply with all laws, regulations, orders and decrees of any federal, State or local government authority or court concerning environmental compliance including, but not limited to, (i) air pollution and emission of air contaminants, including without limitation the regulations of the California Air Resources Board and the Bay Area Air Quality Management District; (ii) management of waste water and groundwater, including without limitation the requirements of the State Water Resources Control Board, the San Francisco Bay Regional Water Quality Control Board and local sanitary districts; and (iii) management and disposal of solid and hazardous wastes generated or discovered in connection with the Work, including without limitation Title 22 of the California Code of Regulations, Title 40 of the Code of Federal Regulations and the requirements of the California Integrated Waste Management Board. The Contractor shall act as the generator of all hazardous waste created or produced in connection with the prosecution of the Work and shall comply with all requirements applicable to generators, including without limitation the payment of any taxes and fees applicable to such generators or their activities, provided, however, that the Contractor shall not be required to act as generator of hazardous waste existing on the site of the Work prior to the date of the Contract. In the event hazardous waste existing on the site of the Work prior to the date of the Contract is discovered, the Contractor shall immediately notify the District and shall take those actions set forth in Article GC4.6 and other applicable provisions of the Contract Documents.

GC7.11 Use of Explosives. All explosives shall be stored in a secure manner, in compliance with all laws and ordinances, and all such storage places shall be marked clearly, "DANGEROUS - EXPLOSIVES." The use of explosives shall require the written approval of the Engineer. Such approval will be granted only after the Contractor has satisfied the Engineer on the safety of Contractor's proposed operation, protection of the public, and compliance with applicable regulations and that no other method is practical.

GC7.11.1 Notification to Owner. The Contractor shall notify each public utility and property owner having structures near the site of the Work of Contractor's intention to use explosives sufficiently in advance to enable them to take such steps as they

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deem necessary to protect their property from injury. Such notice will not relieve the Contractor of responsibility for any damage resulting from Contractor's blasting operations.

GC7.12 Emergencies. In an emergency affecting the safety of persons, the Work, or adjoining property, the Contractor, without special instructions or authorization from the Engineer, shall act to prevent such threatened loss or injury. In such an emergency the Contractor shall perform such additional work as is required. Any compensation claimed by the Contractor on account of emergency work shall be governed by the claims provisions of Article GC9.4 or as deemed appropriate by the Engineer.

GC7.12.1 Emergency Work by Other Forces. If during the progress of the Contract, the Contractor is absent from the locations of the Work at the time when a failure or faulty condition of the Contractor's work requires emergency action in the public interest, the District shall have the right to make repairs or corrections by itself or with other forces, as required, and the District will withhold from monies due the Contractor any costs which the District incurs from such emergency work.

GC7.13 Indemnification. As between the District as one party, and the Contractor as the other party, the Contractor is deemed to assume responsibility and liability for all damage, loss or injury of any kind or nature whatever to persons or property, public utilities and Non-Transit Facilities, caused by or resulting from or in connection with any action or omission on the part of the Contractor or any of Contractor's officers, agents, directors, employees or Subcontractors or their performance of the Work. The Contractor shall indemnify, defend and hold harmless the District, and any and all of its directors, officers, agents or employees to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages, or expenses (including attorneys' fees and related costs), whether direct or indirect, for loss of or damage to any property (including the property of the District), for injury to or death of any person (including an employee of the District, public utilities and Non-Transit Facilities, or the Contractor or its Subcontractors), or otherwise arising out of or relating to the performance of the Work and the Contract. This duty on the part of the Contractor to indemnify, defend and hold harmless the District shall expressly include all claims and lawsuits brought against the District where the District is named as a defendant but is not the real party in interest, including, without limitation, all actions on stop notices brought by Subcontractors on this Contract.

GC7.13.1 District Negligence. The foregoing indemnification obligation shall not apply to liability arising solely from adjudicated or admitted active negligence or willful misconduct of the District, or its directors, officers, agents, employees or independent contractors who are directly responsible to the District, or for defects in design furnished by such persons. If adjudicated or admitted active negligence or willful misconduct of the District has contributed to a loss, the Contractor shall not be obligated to indemnify the District for the proportionate share of such claims, loss, damage, charge or expense caused by the active negligence or willful misconduct of the District.

GC7.14 Loss of or Damage to Existing District Property. The Contractor shall endeavor to avoid injury or damage to existing improvements or facilities of the District that are not to be removed. Trees, shrubbery, pole lines, fences, signs, survey markers, monuments, buildings, structures, conduits, pipe lines, sewer lines, water lines, highway facilities, BART System facilities, and all other improvements and facilities, under or above ground, that are within or adjacent to the work limit line and are not to be removed shall be protected from injury or damage. The Contractor shall provide suitable safeguards to protect such objects and improvements from injury or damage. If such objects or improvements are injured or damaged by reason of the Contractor's operations they shall be replaced or restored to a condition as good as when the Contractor entered upon the Jobsite, or as good as required by the Contract Documents, if any such objects and improvements are a part of the Work being performed under the Contract.

GC7.14.1 Facilities Not on Drawings. The fact that any facility is not shown on the Contract Drawings shall not relieve the Contractor of responsibility under this Article GC7.14. It shall be the Contractor's responsibility to ascertain the existence of all improvements and facilities which may be damaged by Contractor's operations.

GC7.14.2 Temporary Repairs by District. The Engineer may make or cause to be made such temporary repairs as are necessary to restore to service any facility damaged by the Contractor. The cost of such repairs shall be borne by the Contractor and may be deducted from any monies due or to become due to the Contractor.

GC7.14.3 Notice by Contractor. The Contractor shall notify the District of an existing improvement or facility at least four days in advance of doing any relocation or restoration work thereon.

GC7.15 Loss or Damage to the Work and Materials. Until the Acceptance of the Work or earlier relief under Articles GC5.13 and GC5.14 the 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, materials in transit, and materials which have been furnished by the District, 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. The Contractor shall rebuild, repair or restore all injuries, losses, or damages to any portion of the Work and materials occasioned by any cause before its completion and Acceptance and shall bear the expense thereof. Where necessary, the Contractor shall, at Contractor's expense, provide suitable drainage and erect such temporary structures as are necessary to protect the Work and materials from damage. The suspension of the Work from any cause whatever shall not relieve the Contractor of responsibility for the Work and materials as herein specified. The Contractor shall properly store materials which have been partially paid for by the District or which have been furnished by the District. Such storage by the Contractor shall be on behalf of the District and the District shall at all times be entitled to the possession of such materials, and the Contractor shall promptly return the same when requested.

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The Contractor shall not dispose of any of the materials so stored except on written authorization from the Engineer.

GC7.16 Independent Contractor. The Contractor is an independent contractor with respect to the performance of all Work hereunder, retaining control over the detail of its own operations, and the Contractor shall not be considered the agent, partner, fiduciary or trustee of the District.

GC7.17 Strict Performance. A waiver by the District of a default, or of a requirement of the Contract Documents, shall not constitute a waiver of any default or of such requirement in any other situation or circumstance.

GC7.18 Governing Law and Choice of Forum. The Contract, and the relationship of the District and the Contractor arising out of or relating to the Contract, shall be governed by and construed in accordance with the laws of the State, without regard to conflict of law rules. Suit to resolve any dispute arising out of or relating to the Contract or to the relationship between the District and the Contractor, shall be filed in the United States District Court for the Northern District of California, unless jurisdiction is lacking, in which case suit shall be filed in the Superior Court of the State in and for the County of Alameda.

GC7.19 Entire Agreement. The Contract Documents, including all documents and specifications incorporated therein by reference, constitute the entire agreement between the District and the Contractor with respect to the Work, and supersede any prior oral or written agreements, understandings and commitments.

GC7.20 Modifications. Any waiver, modification or amendment of any provisions of any of the Contract Documents shall be effective only if in a writing, signed by authorized representatives of both the District and Contractor, that specifically references this Contract. No waiver, modification or amendment of any provisions of any of the Contract Documents that is made only orally shall be effective for any purpose.

GC7.21 Severability. Whenever possible, each provision of the Contract Documents shall be interpreted in a manner as to be effective and valid under applicable law. However, if any provision, or part of any provision, should be prohibited or invalid under applicable law, such provision, or part of such provision, shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Contract Documents.

GC7.22 Language. All specifications, drawings, manuals and other documents to be prepared under the Contract shall be written in the English language.

GC7.23 Preference For Local Residents. Insofar as practical, the Contractor shall, in choosing among otherwise equally qualified applicants for employment, employ workers who are residents of the counties comprising the District in the performance of the Work.

GC7.24 Publicity. The District reserves the right to review and approve all District-related copy prior to publication. The Contractor agrees not to allow District-related copy to be published in the Contractor's advertisements or public relations programs without prior approval from the Engineer. The Contractor agrees that published information on the District or the District's program shall be factual and in no way imply that the District endorses the Contractor's firm, service, or product.

GC7.25 Financial Contribution Limitations.

- (a) Contractor shall not make any monetary or in-kind contributions (including loans) to any BART Director, or any candidate for Director, for three months following Award of this Contract.
- (b) The term "contribution" shall have the same meaning as defined in Government Code Section 82015 and implementing regulations adopted by the Fair Political Practices Commission.
- (c) Contractor shall include the language of this provision in Subcontracts for any first tier Subcontractor whose contract exceeds \$100,000.

GC7.26 Notification of Third Party Claims. In accordance with the provisions of State Public Contract Code Section 9201, the District shall notify the Contractor in a timely manner of the receipt of any third party claim relating to the Contract. The District is entitled to recover its reasonable costs incurred in providing this notification.

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ARTICLE GC8

PROSECUTION AND PROGRESS

GC8.1 Commencement of Work. The District will issue a Notice to Proceed with an effective date not later than thirty days after execution of the Contract. Such Notice to Proceed may be issued by the District as early as one day after such execution. The Contractor is not authorized to perform any work until the Contractor has received a Notice to Proceed from the District. Within five days after the effective date of such Notice to Proceed, and after the Contractor has complied with the insurance requirements required in Article GC2.2, the Contractor shall commence Work and shall diligently prosecute the same to completion within the time limits provided in the Contract. The Contractor shall give the Engineer 72 hours advance written notice prior to commencement of work at the Construction Site.

GC8.2 Progress Schedules.

GC8.2.1 Submittal. The Contractor shall prepare and submit progress schedules for the Work for the District's approval as provided in the Contract Specifications. Timely submittal and revision of the schedules are essential to ensure the satisfactory prosecution and timely completion of the Work. If the Contractor fails to submit the required schedule within the times stipulated, the District, in addition to all other remedies for such default, may withhold payments otherwise due, and may direct the Contractor to take remedial measures, as provided in the Contract Specifications. All schedules submitted shall show on the Critical Path the effects of any occurrence upon which the Contractor has based or will base any claim or Notice of Potential Claim for an extension of time, and shall expressly call the District's attention thereto. Failure to so indicate in the schedules shall conclusively preclude the Contractor from asserting any claim for additional compensation, damages or schedule extension due to such occurrence.

GC8.2.2 Delays. If, in the opinion of the Engineer, the Contractor falls significantly behind the approved schedule, the Contractor shall without additional charge to the District take any and all steps necessary to improve the Contractor's progress. The Engineer, in such case, may require the Contractor to increase the number of shifts, initiate or increase overtime operations, increase days of work in the work week, or increase the amount of construction plant, order or reorder equipment or materials, or all of the foregoing. The District may also require the Contractor to submit for approval supplemental progress schedules detailing specific operation changes to be instituted to regain the approved schedule.

GC8.2.3 Grounds for Termination. Failure of the Contractor to comply with the requirements of the District under Article GC8.2 shall be grounds for determination by the District that the Contractor is not prosecuting the Work with such diligence as will ensure completion within the time specified. Upon such determination, the District may terminate the Contractor's right

to proceed with the Work, or any separate part thereof, in accordance with the provisions of Article GC8.8.

GC8.3 Completion. The Contractor shall complete all or any designated portion of the Work called for under the Contract in all parts and requirements within the number of days set forth in the Contract Specifications, unless revised by approved Change Orders. Time shall be computed starting the first day after the effective date of the Notice to Proceed and shall include the last day on which Work is done. The effective date of the Notice to Proceed will be the date stated as such in the Notice to Proceed, provided that in no case shall such effective date be earlier than the day following the issuance of such Notice to Proceed.

GC8.3.1 Additional Shift Work. The time limits specified for the completion of Work contemplated may be insufficient to permit completion of the Work by the Contractor working a normal number of hours per day or week on a single shift basis. Where additional shifts or premium pay are necessary to ensure that the Work will be completed within the time limits specified, any resulting additional costs will be considered to be included in the price paid for the various Contract items of work and no additional compensation shall be allowed therefor.

GC8.3.2 Certificate of Substantial Completion. When all or any designated portion of the Work has been substantially completed to the satisfaction of the Engineer, the District will issue to the Contractor a Certificate of Substantial Completion for purposes of computing liquidated damages due to delay pursuant to Article GC8.4. Such Certificate shall relieve the Contractor of responsibility for liquidated damages or for further liquidated damages due to delay for such portions of the Work as are specifically referenced in the Certificate but shall in no case be construed as relieving the Contractor from:

- (a) Responsibility for liquidated damages due to delay for any portion or portions of the Work not specifically referenced therein;
- (b) Any other requirement under the Contract Documents.

Such Certificate shall not constitute Acceptance.

GC8.4 Delays.

GC8.4.1 Liquidated Damages. In case all or any designated portion of the Work called for under the Contract is not completed within the number of calendar days set forth in the Contract Specifications, as may be revised by approved Change Orders, damage will be sustained by the District, and it is difficult or impossible to determine the extent of such damages, accordingly the Contractor shall pay to the District the amount set forth in the Contract Specifications per day as liquidated damages for every calendar day's delay in finishing the Work or any designated portion thereof in excess of the number of days

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prescribed. Such amounts are recognized by the parties at the time of entering into the Contract to be reasonable under the circumstances. The District may, from time to time, deduct liquidated damages from any monies due or that may become due the Contractor under the Contract. The District is not obligated, however, to make such a deduction or to provide notice thereof. If such deducted monies are insufficient to recover the liquidated damages owing, the Contractor or the Contractor's surety or sureties shall pay to the District any deficiency within 30 days after completion of the Work.

GC8.4.2 Extension of Time for Certain Delays. To the extent that the Contractor proves (a) that the Contractor has been delayed in completion of Critical Path Operations by reason of changes made by the District under Article GC4.2 or Article GC4.3, or a temporary suspension under Article GC8.4.4 attributable to the District, or by any other action or omission of the District, and (b) that the District is responsible and the Contractor is not concurrently responsible for such delay or other concurrent Contractor controlled delay to Critical Path Operations, then an extension of time commensurate with the delay thus caused will be granted and the Contractor shall be relieved from any liquidated damages for the period covered by such extension of time; provided that the Contractor shall strictly comply with the notice and other claims procedures set forth in Article GC9.4. Approval by the District of the Contractor's request for schedule extension shall be made pursuant to Article GC4.2.3.1.

GC8.4.3 Compensation for Certain Delays. To the extent that the Contractor proves (a) that the Contractor has been delayed in completion of the Critical Path of the Work by reason of changes made by the District under Article GC4.2 or Article GC4.3, or a temporary suspension under Article GC8.4.4 attributable to the District, or by any other action or omission of the District, (b) that the Contractor was not concurrently responsible for the delay; (c) that the Contractor has suffered actual losses as a result of the delay; (d) that but for the District's actions, the Contractor could not have suffered such actual losses; (e) that the Contractor could not have mitigated such actual losses despite taking all precautionary and remedial actions, and (f) that the delay was not within the contemplation of the Contract, then the District shall pay to the Contractor as full compensation for any such delay, and for any actual and real disruption which may have been associated with any such delay which the Contractor can clearly quantify and calculate, the amount of the actual loss excluding profit as computed in accordance with Article GC8.4.3.1 provided that the Contractor shall strictly comply with the notice and other claims procedures set forth in Article GC9.4. The Contractor shall establish and maintain detailed records to segregate the additional costs involved for such delays. Unless the Contractor satisfies the provisions of this Article, the Contractor's sole remedy for District-caused delay shall be an extension of time under Article GC8.4.2.

GC8.4.3.1 Computation of Actual Loss. Actual loss shall be understood to include only the reasonable, adequately supported actual costs compliant with the FAR Cost Principles for the Contractor and the Cost Principles applicable to Subcontractors

incurring delay costs, for idle time of equipment, necessary payment for idle time of workers, cost of extra moving of equipment, and indirect costs as specified herein, that are attributable to a delay by the District. Costs incurred before the delay are not compensable as part of the actual loss. Compensation for actual loss will be determined as follows:

- (a) Calculation of compensation for idle time of equipment will be governed by the force account provisions in Article GC9.3.1.3, with the following exceptions:
 - (i) The time for which such compensation will be paid shall be the actual normal working time during which such delay condition exists.
 - (ii) The "Right of Way Delay Factor" for the applicable classification of equipment as shown in the applicable publication of "Labor Surcharge and Equipment Rental Rates" by the Department of Transportation, Business and Transportation Agency, State of California, is changed to read "District-Controlled Delay Factor" and will be applied to the equipment rental rate.
- (b) Calculation of compensation for idle time of labor shall be governed by the force account provisions in Article GC9.3.1.1. However, the percentages authorized by Article GC9.3.1 shall not be included.
- (c) Calculation of compensation for extra moving of equipment, when such is approved in advance by the Engineer, shall be governed by the force account provisions in Article GC9.3.1.5.
- (d) No other percentages shall be added for overhead or profit. Compensation for the Contractor's increased variable construction-related costs not recovered as a direct cost or through application of percentages per Article GC9.3 shall be paid to the extent the Contractor can establish that such costs are directly attributable to the delay and are necessary to completion of the Work. Under no circumstances will home office overhead be included in the calculations.

GC8.4.4 Temporary Suspensions of Work. The District, in its sole discretion, reserves the right to stop or suspend all or any portion of the Work for such period as the District may deem necessary. The suspension may be due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the Contract or to factors that are not the responsibility of the Contractor. The Contractor shall comply immediately with the written order of the District to suspend the Work wholly or in part. The suspended work shall be resumed when the Contractor is so advised in writing by the District.

GC8.4.4.1 Suspension Due to Contractor's Failure. If the suspension is due to some failure on the part of the Contractor, all costs and delays shall be at no additional expense to the District.

GC8.4.4.2 Safe Passageway. In the event that a suspension of the Work or any portion thereof is ordered, the Contractor shall

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do all the work necessary to provide any safe, smooth, and unobstructed passageway through construction deemed necessary by the Engineer for use by public traffic during the period of such suspension, as provided in Articles GC7.8 and GC7.9, and as specified in the Contract Specifications. In the event that the Contractor fails to perform the work above specified, the District will perform such work and the cost thereof shall be deducted from payments due the Contractor. If the suspension is due to some failure on the part of the Contractor, all costs and delays shall be at no additional expense to the District.

GC8.4.4.3 Contractor Responsibility. In the event of a suspension of the Work or any portion thereof, the Contractor shall not be relieved of Contractor's responsibilities as set forth in Article GC7.

GC8.5 Force Majeure. The Contractor shall be granted an extension of time and shall not be assessed with liquidated damages for any portion of the delay in completion of the Work performed on the Critical Path of the latest accepted progress schedule, caused by acts of God, of the public enemy, fire, floods, earthquakes, unusually severe weather, epidemics, quarantine restrictions, strikes and other work stoppages caused by a labor dispute and freight embargoes; provided that the Contractor establishes that the Work would have been timely completed but for the force-majeure event, that the Contractor has taken reasonable precautions to prevent delays due to such causes and provided that the Contractor shall strictly comply with the notice and other claims procedures set forth in Article GC9.4. The above indicated causes for which extensions of time have been granted shall not be the basis for additional compensation for any Contractor's costs.

GC8.5.1 Unusually Severe Weather. For purposes of this Contract, unusually severe weather shall mean inclement weather or conditions resulting therefrom which occur on days in excess of the number of anticipated non-work weather days listed in Article GC8.5.1.4.

GC8.5.1.1 Non-Work Weather Days. A non-work weather day is defined as any day on which the Contractor is prevented by inclement weather or conditions resulting therefrom as determined by the Engineer, from proceeding with at least 75 percent of the normal labor and equipment force engaged on the current Critical Path Operation(s) for at least 60 percent of the total daily time being spent on the current Critical Path Operation(s).

GC8.5.1.1.1 Start of Work. Should the Contractor prepare to begin work at the regular starting time of any day on which inclement weather, or the conditions resulting therefrom, prevent the work from beginning at the usual starting time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current Critical Path Operation(s), the Contractor will be granted a non-work weather day whether or not conditions should change thereafter during said day and the major portion of the day could be considered to be suitable for such construction operations.

GC8.5.1.1.2 Current Critical Path Operations. Current Critical Path Operations shall be those Critical Path Operations shown on the current Critical Path. The current Critical Path shall be that as shown on the current approved baseline schedule or updated schedule showing current approved progress.

GC8.5.1.1.3 Determination of a Non-Work Weather Day. Determination that a day is a non-work weather day by reason of inclement weather or conditions resulting therefrom, shall be made by the Engineer. The Engineer will furnish the Contractor a weekly statement showing the number of non-work weather days allowed for the preceding week.

GC8.5.1.1.4 Contractor Agreement on Non-Work Weather Day Determination. If the Contractor agrees with the Engineer's determination of non-work weather days, any extensions of time for such non-work weather days shall be governed by Article GC8.5.1.2 below, and for such extensions of time there shall be no requirement to comply with the notice and claims procedures set forth in General Conditions Article GC9.4.

GC8.5.1.1.5 Contractor Disagreement on Non-Work Weather Day Determination. If the Contractor disagrees with the Engineer's weekly statement of non-work weather days, the Contractor must file a written Notice of Potential Claim setting forth in what respects the Contractor differs from the Engineer, otherwise the decision of the Engineer shall be deemed to have been accepted by the Contractor as correct. Such Notice of Potential Claim shall strictly comply with the notice and other claims procedures set forth in General Conditions Article GC9.4.

GC8.5.1.2 Annual Determination of Non-Work Weather Days. An annual determination of non-work weather days will be done on May 1 or such other appropriate date as determined by the Engineer. If the number of non-work weather days for the year is in excess of the anticipated number as listed in Article GC8.5.1.4, the Contractor will be granted an extension of time. The number of excess non-work weather days will be converted to calendar days by applying a factor of 1.45. Fractional calendar days will be rounded to the nearest whole number. A Change Order will be furnished to the Contractor within a reasonable period of time specifying the number of non-work weather days allowed.

GC8.5.1.3 Contractor's Schedule. The Contractor's schedule and work plan shall be formulated with prudent allowance for the number of anticipated non-work weather days listed in Article GC8.5.1.4. The completion time(s) specified in the Contract Specifications has been predicated on these anticipated non-work weather days.

GC8.5.1.4 Anticipated Non-Work Weather Days. The Contractor shall anticipate and plan the Work to allow for the number of non-work weather days by month as shown on the following table. Anticipated non-work weather days are days on which it is assumed no work will occur and as a result no extensions of time or additional compensation will be granted. The determination that a day is one on which no work will occur

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as a result of inclement weather or the conditions resulting therefrom shall be made in accordance with Article GC8.5.1.1. There will be months with less than the anticipated non-work weather days, and any unused anticipated non-work weather days will carry over to subsequent months.

Anticipated Non-work Weather Days (number of days per month)			
Month	Number of days	Month	Number of days
January	3	July	0
February	3	August	0
March	2	September	0
April	1	October	1
May	0	November	1
June	0	December	3

GC8.6 Shortage of Materials. No extension of time will be granted for a delay caused by a shortage of materials (except District-furnished materials), unless the delay was unforeseeable to the Contractor or any Subcontractor and unless the shortage of materials was beyond the control or without the fault or negligence of the Contractor or any Subcontractor. The Contractor shall furnish to the Engineer documentary proof that the Contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach of the Work and further proof in the form of critical-path-analysis data as required in Article GC8.4, that the inability to obtain such 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 the Contractor's operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time and no consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost or price, unless it is shown to the satisfaction of the Engineer that such material could have been obtained only at exorbitant prices entirely out of line with current rates taking into account the quantities involved and the usual practices in obtaining such quantities. The term "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 Contract. Delays in obtaining materials due to priority in filling orders will not constitute a shortage of materials. The granting of such extensions of time shall not be the basis for additional compensation for any Contractor's costs.

GC8.7 Liability to District and Permit-Issuing Authority. The Contractor shall be fully liable to the District and any permit-issuing authority for any failure to obtain a permit or any failure to comply with the terms of any permit, including completing the Work authorized by any government permit within the time or times, if any, stipulated in such permit, in the full amount of any and all damages or consequences, including fines or penalties the District may suffer as a direct or indirect result of such failure. If any such failure delays completion of

Work, or any separate part thereof, for which liquidated damages are stipulated, such damages shall be over and above any liquidated damages for such delay provided in the Contract. As used herein, the term "permit-issuing authority" includes any authority whose permit or license is necessary and incident to the due and lawful prosecution of the Work.

GC8.8 Termination for Contractor's Default. If the Contractor is in default and the Contractor fails to remedy its default within five days after receipt from the Engineer of written notice of such default, the District may, in its discretion, terminate by written notice to the Contractor the Contract or such portion thereof which the Engineer deems is most directly affected by the default. The District may unilaterally defer termination beyond the five day time limit if, in the opinion of the Engineer, the Contractor is making satisfactory efforts to remedy its default. The term "default" for purposes of this Article GC8.8 includes, but is not limited to, violation of the terms of the Contract; abandonment, assignment or subletting of the Contract without approval of the District; filing a petition for bankruptcy by or against the Contractor or for appointment of a receiver for Contractor's property; failure to maintain the schedule of Work; refusal or failure to properly prosecute the Work; use of materials, supplies, plant or equipment of improper quality or quantity; failure to use an adequate number of properly skilled workers; failure to provide adequate design professional services or supervision of such services; failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; or the performance of the Contract in bad faith.

GC8.8.1 Expense of Completion. Upon the District's termination of the Contract or a portion of it, the District shall have the right to complete the Work or the portion terminated by whatever means and methods it deems expedient, including the hiring of others on such terms as the District deems advisable. The expense of completing such Work or portion thereof shall be charged to the Contractor. The expense so charged may be deducted by the District out of such monies as may be due or become due to the Contractor. The District may withhold all or any part of any payments otherwise due the Contractor until completion and final settlement of the Work covered by such notice of default.

GC8.9 Termination for the Convenience of the District. The performance of the Work under the Contract may be terminated in whole or in part by the District upon written notice to the Contractor in accordance with this Article GC8.9 whenever the District determines that such termination is in its best interest. After receipt of said notice, the Contractor shall submit to the Engineer its termination claim, which claim shall be submitted in accordance with the claims provisions of Article GC9.4 and the payment provisions in Article GC9.8. Any such claim may include a reasonable allowance for profit on work done, but shall not include loss of anticipatory profit or profit on work not done.

GC8.10 Termination for Causes Beyond the Control of the Contractor. The performance of Work under this Contract may be terminated by the District, in its sole discretion, upon

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application therefor by the Contractor for unforeseen causes beyond the control and without fault or negligence of the Contractor, including any force majeure event as defined in Article GC8.5, if such causes irrecoverably disrupt or render impossible the Contractor's performance hereunder. Should any such unforeseen circumstances occur, the Contractor shall file written notice with the Engineer within 48 hours after the circumstances come to the Contractor's notice and shall furnish the Engineer with documentary evidence of the fact and effect of the circumstances. Upon termination pursuant to this Article, the Contractor shall be compensated for all equipment, materials, supplies and services accepted by the District whether such acceptance occurs before or after such termination.

GC8.11 Actions Taken Following Termination. Immediately upon receipt of a notice of termination, the Contractor shall: (a) stop work under the Contract on the date and to the extent specified in said notice; (b) terminate, unless otherwise directed by the Engineer, all orders and Subcontracts to the extent that they relate to the performance of work terminated and place no further orders or Subcontracts, except as may be necessary for the completion of such portion of the Work under the Contract as is not terminated; (c) if directed by the Engineer, assign to the District all of the right, title and interest of the Contractor under any orders and Subcontracts; (d) if directed by the Engineer, transfer title and deliver to the District (i) the fabricated or unfabricated parts, work in progress, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and (ii) the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to have been furnished to the District; and (e) complete performance of such parts of the Work as shall not have been terminated by said notice.

GC8.12 Liability for Expenses. Contractor shall be liable to the District for expenses incurred due to the Contractor's failure to perform tasks in accordance with the Contract requirements. Such expenses may include costs to the District for providing personnel to perform tasks on behalf of the Contractor and shall be subject to an advance notice to the Contractor that such expenses are expected to be incurred. These expenses may be deducted as unilateral credit Change Orders or as part of the Change Orders issued in accordance with Article GC4.2

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ARTICLE GC9

PAYMENT, RECORDS AND CLAIMS

GC9.1 Scope of Payment. The Contractor shall accept the compensation provided in the Contract 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 Contract; 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, except as provided under Article GC5.13, all until the Acceptance by the District; and except as otherwise indicated, for all risks of every description connected with the prosecution of the Work; also for all expense incurred in consequence of the suspension or discontinuance of the Work as herein specified; and for completing the Work according to the Contract Documents. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

GC9.1.1 Loss of Profits. No compensation will be made in any case for loss of anticipated profits.

GC9.1.2 No Separate Payment for General Conditions. Except as specifically provided otherwise, no separate payment will be made for any of the requirements of these General Conditions nor of the respective Supplementary Conditions relating thereto, and the cost thereof shall be considered as included in the prices paid for the various Contract items included in the Contractor's Bid.

GC9.1.3 Unit Price. If the "payment" clause in the Contract Specifications relating to any unit price in the Bid Schedule requires that the said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured for payment using a payment clause elsewhere in the Contract Specifications or paid for under any other Bid Item which may appear elsewhere in the Contract Specifications or in the Bid Schedule.

GC9.2 Measurement for Payment. Measurement for payment for the various features of the Work will be in accordance with the Contract Specifications.

GC9.3 Force Account. When work is to be performed on a force account basis, the labor, materials and equipment used in the performance of such work shall be subject to the approval of the Engineer, which approval will not be withheld provided the Contractor can demonstrate to the satisfaction of the Engineer that the Work is being performed in an efficient and prudent manner. Compensation will be determined as follows:

GC9.3.1 Work Performed by or for Contractor. Labor, materials, and equipment shall be furnished by the Contractor or by a Subcontractor or by others on behalf of the Contractor. The Contractor will be paid therefor as hereafter provided, pursuant

to an executed Change Order except where agreement has been reached to pay in accordance with Article GC9.3.2.

The following maximum allowable percentages, subject to reduction by the District's final audit, will be added to the totals computed as provided in Articles GC9.3.1.1 through GC9.3.1.6:

Labor (District-Provided Insurance)	20 percent
Labor (Contractor-Provided Insurance)	22 percent
Materials	15 percent
Equipment Rental	15 percent
Subcontract Work	5 percent
Other Direct Cost	0 percent

The above percentages shall cover field office overhead, home office overhead, and profit, including but not limited to supervision, engineering, estimating, clerical support, trailer rental, waste disposal, postage, telephone, printing, utilities, small tools, storage sheds, supervisors' and foreworkers' vehicles, and Subcontract bonds. To the totals computed under Articles GC9.3.1.1 through GC9.3.1.6 and the above percentages, an amount not to exceed one percent will be added for increased bond costs upon the Contractor showing that it has incurred additional costs for bonding. Only one 5 percent mark-up for Subcontract work will be granted regardless of the tier of Subcontractor which performs the work. For the purposes of Article GC9.3, "Subcontractor" is defined as an individual, partnership, corporation, association, joint venture, or any combination thereof, who contracts with the Contractor to perform work or labor or render service on or about the Work. The term Subcontractor shall not include suppliers of materials only. When work paid for on a force account basis is performed by forces other than the Contractor's organization, the Contractor shall reach agreement with such other forces as to the distribution of the payment made by the District for such work and no additional payment therefor will be made by the District by reason of performance of the work by the Subcontractor or by others. No percentage will be added to other direct costs passed through to the District for reimbursement.

GC9.3.1.1 Labor. The cost of labor used in performing the Work, whether the employer is the Contractor, Subcontractor, or other forces, will be the sum of the following:

- (a) Actual Wages. The actual wages paid including any employer payments to or on behalf of workers for health and welfare, pension, vacation, and similar purposes.
- (b) Labor Surcharge. To the actual wages, as defined in Article GC9.3.1.1(a), will be added a labor surcharge set forth in the State 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. Said labor surcharge shall constitute full compensation for all payments imposed by

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State and Federal laws, and for all other payments made to, or on behalf of, the workers, other than actual wages as defined in Article GC9.3.1.1(a) and subsistence and travel allowance as specified in Article GC9.3.1.1(c).

- (c) Subsistence and travel allowance paid to such workers as required by collective bargaining agreements.

The charges for labor shall include all classifications up to foreworkers and shall include foreworkers when authorized by the Engineer and when foreworkers are engaged in the actual and direct performance of the Work. Labor charges shall not include charges for assistant superintendents, superintendents, office personnel, timekeepers, and maintenance mechanics, all of which are included in the authorized markups set forth in Article GC9.3.1.

GC9.3.1.2 Materials. The cost of materials required for the accomplishment of the Work will be the delivered cost to the purchaser, whether Contractor, Subcontractor or other forces, from the supplier thereof, except as the following are applicable:

- (a) If a cash or trade discount is offered or available whether or not such discount may have been taken, it shall be credited to the District.
- (b) 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 such purchaser, the cost of such materials shall be deemed to be the price paid to the actual supplier as determined by the Engineer. No markup except for actual costs incurred in the handling of such materials will be permitted.
- (c) If the materials are obtained from a supply or source owned wholly or in part by the purchaser, payment therefor will not exceed the price paid by the purchaser for similar materials furnished from said source on Contract items or the current wholesale price for such materials delivered to the jobsite, whichever price is lower.
- (d) If the cost of such materials is, in the opinion of the Engineer, excessive, then the cost of such materials shall be deemed to be the lowest current wholesale price at which such materials are available in the quantities concerned, delivered to the jobsite, less any discounts as provided in Article GC9.3.1.2(a).
- (e) If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof, the cost shall then be determined in accordance with Article GC9.3.1.2(d).

The Contractor shall have no claims for costs and profit on District-furnished materials.

GC9.3.1.3 Equipment Rental. Contractor will be paid for the use of equipment at the rental rates listed for such equipment in the most recent and applicable publication at that time of "Labor Surcharge and Equipment Rental Rates" by the Department of Transportation, Business and Transportation Agency, State of

California, regardless of ownership and any rental or other agreement for the use of such equipment entered into by the Contractor, except that for those pieces of equipment with a rental rate of \$10 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, the Contractor will be paid at the hourly rate shown on the rental agency invoice or agreement for the time used on force account work. If a minimum equipment rental amount is required by the local equipment rental agency, the actual amount charged will be paid to the Contractor. If it is deemed necessary by the Engineer to use equipment not listed in said publication, a suitable rental rate for such equipment will be established by the Engineer. Contractor shall furnish all cost data which might assist the Engineer in the establishment of such rental rate.

GC9.3.1.3.1 Rental Rates. The rental rates paid as above provided shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, and all incidentals.

GC9.3.1.3.2 Operators of Rented Equipment. Operators of rented equipment will be paid as provided under Article GC9.3.1.1.

GC9.3.1.3.3 Condition of Equipment. All equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.

GC9.3.1.3.4 Manufacturer's Ratings. 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.

GC9.3.1.3.5 Small Tools. Individual pieces of equipment or tools having a new value of \$500 or less, whether or not consumed by use, shall be considered to be small tools included in the percentages indicated in Article GC9.3.1 and no payment will be made therefor.

GC9.3.1.3.6 Rental Time. Rental time will not be allowed while equipment is inoperative due to breakdown. In computing the rental time of equipment, less than 30 minutes shall be considered one-half hour.

GC9.3.1.4 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 force-account work being performed, and in addition, shall include the time required to move the equipment to location of the force-account work and return it to the original location or to another location requiring no more time than that required to return it to its original location, except that moving time will not be paid for if the equipment is used at the site of the force-account work on other than such force-account 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

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equipment is used at the site of the force-account work on other than such force-account work.

GC9.3.1.5 Equipment Not on the Work. For the use of equipment moved in on the Work and used exclusively for Work paid for on a force-account basis, the Contractor will be paid the rental rates listed in the Contract Specifications or as agreed to as provided in Article GC9.3.1.3 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:

- (a) The original location of the equipment to be hauled to the location of the Work shall be agreed to by the Engineer in advance.
- (b) The District will pay the costs of loading and unloading such equipment.
- (c) The cost of transporting equipment in low-bed trailers shall not exceed the hourly rates charged by established haulers.
- (d) The cost of transporting equipment shall not exceed the applicable minimum established rates of the C.P.U.C.
- (e) The rental period shall begin at the time the equipment is unloaded at the site of the force-account work, shall include each day that the equipment is at the site of the force-account work, excluding Saturdays and Sundays and other legal holidays unless the force-account work is performed on such days, and shall terminate when the work it was hired to perform is completed or at the end of the day on which the Engineer directs the Contractor to discontinue the use of such equipment. The maximum rental time to be paid per day will not exceed eight hours unless the equipment is in operation for a longer time. The minimum rental time to be paid for the entire rental period shall not be less than eight hours. If the entire rental period to be paid for exceeds eight hours, the rental time which will be paid per day will be in accordance with the following:

Hours Equipment is in Operation in Excess of Eight Hours	Hours to be Paid
0.5 and over up to and including 2	2
over 2 and up to and including 4	4
over 4 and up to and including 6	6
over 6 and up to and including 8	8

- (f) Should the Contractor desire the return of the equipment to a location other than its original location, the District will pay the cost of transportation in accordance with the above provisions, provided such payment shall not exceed the cost of moving the equipment to the Work.
- (g) Payment for transporting, and loading and unloading equipment, as above provided, will not be made if the equipment is used on the Work in any other way than upon force-account work paid for on a force-account basis.

GC9.3.1.6 Subcontracts. The cost for Subcontract work will be the actual cost to the Contractor for work performed by a Subcontractor. For purposes of this Article, the Subcontractor's costs shall not exceed those computed in accordance with the provision set forth in Articles GC9.3.1.1 through GC9.3.1.5.

GC9.3.1.7 Other Direct Cost. Other Direct Costs shall include necessary expenses incurred without written contract and submitted by the Contractor or a Subcontractor for reimbursement. Examples include but are not limited to fees, permits, and purchases not incorporated in the Work.

GC9.3.2 Work Performed by Special Forces or Other Special Services. When the Engineer determines that a special service or an item of extra work cannot be performed by the forces of the Contractor or those of any of its Subcontractors, such service or extra work item may be performed by a specialist. Invoices for such 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 such complete itemization. To the specialist invoice price, less a credit to the District for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added five percent in lieu of the percentages provided in Article GC9.3.1.

GC9.3.3 Records. The Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of work performed or required to be performed on a force account basis and the costs of other operations.

GC9.3.3.1 Daily Report Sheets. On the following work day the Contractor shall prepare and furnish to the Engineer signed report sheets in duplicate of each day's work performed on a force-account basis. The daily report sheets shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, Subcontractor or other forces, except for charges described in Article GC9.3.2. The daily report sheets 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.

GC9.3.3.2 Material Charges. Material charges shall be substantiated by valid copies of vendor's invoices. Such invoices shall be submitted with the daily report sheets. If invoices are not available, they shall be submitted with subsequent daily report sheets, however, except as provided by law, no payment shall be made for material charges until valid copies of vendor's invoices are submitted. Should said vendor's invoices not be submitted within 60 days after the date of delivery of the material or 15 days after Acceptance of the Work, whichever comes first, the Engineer reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials are available in the quantities concerned delivered to the location of the Work less any discounts provided in Article GC9.3.1.2(a).

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GC9.3.3.3 Certification of Daily Report Sheets. Said daily report sheets shall be signed by the Contractor or Contractor's authorized agent and shall be certified to be current and correct.

GC9.3.3.4 Review of Daily Report Sheets. The Engineer will compare the Engineer's records with the daily report sheets furnished by the Contractor and make any necessary adjustment. The Contractor shall compile the costs of work performed on a force-account basis on daily force-account work report forms furnished by the Engineer. When these daily reports are agreed upon and signed by both parties, they shall establish the price for the work performed, but shall not preclude subsequent adjustment based on a later audit.

GC9.3.3.5 Contractor's Cost Records. The Contractor's original cost records pertaining to work paid for on a force-account basis shall be open to inspection or audit by representatives of the District during the life of the Contract and for a period of not less than three years after the date of Acceptance thereof, and the Contractor shall retain such records, for that period.

GC9.3.4 Payment. Payment as provided in Articles GC9.3.1 and GC9.3.2 shall constitute full compensation to the Contractor for performance of work paid for on a force-account basis and no additional compensation will be allowed therefor.

GC9.4 Potential Claims. The Contractor shall not be entitled to any additional compensation or damages otherwise payable or to any extension of time for completion as a result of any act or failure to act by the Engineer or the District, the happening of any event or occurrence, or any other cause, unless the Contractor shall have given the Engineer a written Notice of Potential Claim therefor as hereinafter specified and shall have complied with the other requirements specified in this Article; provided, however, that a Notice of Potential Claim will not be required for protests made in accordance with the change procedures of Article GC4.2 until the completion of the procedures set forth in that Article, nor for a claim based on a difference in measurement or an error of computation as to Contract quantities.

GC9.4.1 Notice of Potential Claim.

- (a) The Contractor shall provide the Engineer with an initial written notice of the Contractor's intent to file a potential claim. Such initial notice shall be provided not later than 48 hours following the occurrence of the event on which the potential claim is based, and shall contain as much information concerning the event and its impact on cost or schedule as is reasonably available to the Contractor within such time period.
- (b) The Contractor shall provide the Engineer with a written Notice of Potential Claim not later than 20 days following the occurrence of the event upon which its potential claim is based unless the Engineer agrees in writing to an extension. The written Notice of Potential Claim shall be submitted on forms provided by the District, shall be certified with reference to the California False Claims Act, Gov. Code Section 12650-12655, and shall be signed by a representative of the Contractor having greater authority than the Contractor's Representative as described in Article

GC5.6. The Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or a schedule extension will or may be due; the applicable Contract Document references supporting such claim; the efforts taken and to be taken to prevent or minimize the costs or extension; the nature of the costs, including a detailed cost estimate with supporting breakdown of costs; the nature of the schedule extension involved, if applicable; and impacts, if any, on the Contract. Furthermore, the Contractor shall thereafter, on a monthly basis and not later than the 15th day of the following month, submit to the Engineer any costs, expenses or damages actually incurred during the month, and any identified delays incurred by reason of the events given rise to the Notice of Potential Claim. Failure to submit such monthly costs for all Notice of Potential Claims filed, shall be sufficient cause to deny any costs incurred subsequent to the filing of each said Notice of Potential Claim.

- (c) Further Information. All Notices of Potential Claim presented by the Contractor shall be in sufficient detail to enable the Engineer to ascertain the basis and amount of said potential claim. The Contractor shall furnish, within 10 days after the Engineer requests in writing, such further information and details including, but not limited to, books of account, records and other documents of the Contractor and of its Subcontractors, as may be required by the Engineer to determine the facts or contentions involved in the Contractor's notice. Failure to present such information will be sufficient cause for rejecting any potential claim after the Engineer's request for further information, unless such time is extended in writing by the Engineer.
- (d) Amendments. The Contractor may amend any Notice of Potential Claim within 5 days after the date of submission of the original notice. Any amendments presented after that time shall be considered only at the option of the District and shall not, without the written consent of the District, extend the Contractor's time to act pursuant to Article GC9.4.
- (e) Conferences. The Contractor shall, as required by the District, meet and confer with the Engineer or any other representative of the District involved in evaluating the Contractor's potential claim to discuss the potential claim. The District may require Contractor representatives having greater authority than Contractor's representative described in Article GC5.6 to attend any such meetings.
- (f) Continuation of Work. Notwithstanding any Notice of Potential Claim, the Contractor's duty to complete the Work in accordance with the provisions of the Contract shall not be postponed or abated.

GC9.4.2 Basis for Cost Claims. Any adjustment in Contract Price resulting from cost items submitted in any Notice of Potential Claim will be determined in accordance with the provisions of Article GC4.2.2, except for adjustments in Contract Price resulting from costs suffered as a result of delays

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compensable under Article GC8.4.3, which shall be governed by the provisions of Article GC8.4.3.1.

GC9.4.3 District Review of Notice of Potential Claim.

- (a) In the absence of a written agreement extending its time to act, and subject to the requirements of applicable law, the District shall act on a Notice of Potential Claim within 45 days after all data requested by the District or the Engineer have been provided. If the District fails or refuses to act on a potential claim within such time, the potential claim shall be deemed to have been rejected by the District on the last day of the period within which the District was required to act upon the potential claim. If the period within which the District was required to act is extended by agreement, the last day of that period shall be the last day of the period specified in such agreement.
- (b) Written notice of the action taken by the District shall be delivered in the manner prescribed by Article GC9.8.4. If the potential claim is deemed to be valid by the District, a Change Order will be issued in accordance with Article GC4.2.
- (c) If the potential claim is rejected, or deemed to have been rejected, in whole or in part, the Contractor may file a claim against the District based on such potential claim after issuance of the final invoice in accordance with Article GC9.8, subject to the requirements of applicable law, any Supplementary Conditions concerning resolution of claims, and Article GC9.4.4 below.
- (d) The requirements of this Article GC9.4.3 and any applicable statutory provisions affecting the time in which the Contractor may act pursuant to Article GC9.4 may be waived by the District. Such waiver shall be in writing and shall be revocable upon not less than 30 days' written notice.

GC9.4.4 Deferral of Legal Action. It is the intention of this Article GC9.4 that differences between the parties arising under and by virtue of the Contract shall be brought to the attention of the District at the earliest possible time in order that such matters may be settled without a claim being filed, if possible, or other appropriate action promptly taken. The Contractor agrees to defer, in the absence of special written notice given by the District, the commencement of any legal action against the District on a matter required to be covered by written Notice of Potential Claim pursuant to Article GC9.4 until after the District has made payment on the Approved Final Invoice pursuant to Article GC9.8.

GC9.4.5 Strict Compliance. Failure to comply strictly with the notice and other procedures set forth in this Article GC9.4 shall bar the Contractor from asserting any claim or right to compensation, damages, schedule extension or any other relief.

GC9.5 Antitrust Claims. The Contractor represents that the prices quoted are not in violation of the Robinson-Patman Act or comparable California statutes and agrees to defend, hold harmless and indemnify the District from any claim, liability,

loss, damages or expense, including attorneys' fees and related costs, incurred by it arising from the Robinson-Patman Act or comparable California statutes. In entering into the Contract, Contractor offers and agrees to assign to the District all right, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Section 15 et seq.) or under the Cartwright Act (Chapter 2, commencing with Section 16700 of Part 2 of Division 7 of the State Business and Professions Code), arising from purchases of goods, materials or services pursuant to the Contract. This assignment shall be made and become effective at the time the District tenders final payment to Contractor without further acknowledgment by the parties.

GC9.6 Stop Notices. The District may, at its option and at any time, retain out of any amounts due the Contractor, sums sufficient to cover stop notice claims filed pursuant to Sections 3082 et seq. of the State Civil Code.

GC9.7 Partial Payments. The Contractor may invoice for work completed in accordance with the Contract Specifications.

GC9.7.1 Retention. In addition to amounts, if any, withheld pursuant to any other provision of the Contract Documents, the District will retain an amount equal to ten percent of the value of all work done and materials furnished, except that at any time after fifty percent of the Work has been completed the District in its sole discretion may make any of the remaining invoice payments in full for actual work completed or may, at the discretion of the District, withhold any amount up to ten percent thereof as the District may find appropriate, based on the Contractor's progress. At no time during the duration of the Contract shall the retention fall below five percent of the actual work completed, and shall be in compliance with the applicable State Public Contracts Code.

GC9.7.1.1 Substitution of Securities. At the request and expense of the Contractor, and following execution of an escrow agreement satisfactory to the District and in substantially similar form to that in Section 22300 of the State Public Contract Code, securities equivalent to any amount retained under Article GC9.7.1 may be deposited with the District, or with a State or Federally chartered bank as escrow agent. Upon satisfactory completion of Contract requirements, the securities shall be returned to Contractor. Securities eligible for investment are those specified in Section 22300 of the State Public Contract Code.

GC9.7.2 Time of Payment. The District will pay monthly to the 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 Contract. Each acceptable Contractor's invoice will be paid by District within 30 days of the District's receipt of the invoice. No such invoice will be acceptable when the Work is not proceeding in accordance with the provisions of the Contract or when the total value of work done, as shown on the invoice, is less than \$1,000. No such invoice nor payment shall be construed to be an acceptance of any work or materials.

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GC9.7.2.1 Prompt Payment. The Contractor shall promptly pay any and all Subcontractors no later than 30 days after receipt of payment by BART, for satisfactory performance of its Contract, the amounts to which they are entitled, after deducting any prior payments and any amount due and payable to the Contractor by those Subcontractors. If the Contractor determines the work of the Subcontractors to be unsatisfactory, the Contractor shall immediately notify in writing the District and state the reasons. Failure by the Contractor to comply with this requirement will be construed to be breach of Contract and maybe subject to sanctions as specified in the Contract including but not limited to Article GC8.8.

GC9.7.3 Payment Waivers and Releases. As a condition of a request to the District for any progress or final payment, the Contractor shall certify on forms provided by the District that the work that is identified in the request for payment has been performed in accordance with the requirements of the Contract. The District may require as a condition precedent to any progress or final payment that the Contractor submit evidence satisfactory to the District that all costs incurred by the Contractor and its Subcontractors have been paid. Such evidence may include receipted bills, conditional or unconditional releases and waivers of lien, stop notice, and bond rights in the form established therefor by Section 3262 of the State Civil Code. The District may also make payments using methods that ensure that the parties that have or may have lien, stop notice, and bond rights are paid. Such methods may include checks drawn jointly to the Contractor and other parties, or a payment distribution system.

GC9.8 Final Payment and Claims. Within 30 days after Acceptance by the District, the Contractor shall prepare and present to the Engineer a proposed final invoice in writing showing the proposed total amount of compensation under the Contract, including therein an itemization of said amount segregated as to Contract item quantities, force account work and other bases for payment, and showing all deductions made or to be made for prior payments and amounts to be kept or retained under the provisions of the Contract, together with any and all potential claims under Article GC9.4 that have not yet been resolved or a statement that no such claims will be filed. All prior invoices and payments shall be subject to correction in the Proposed Final Invoice. No claim for which a Notice of Potential Claim is required will be considered unless the Contractor has strictly complied with the notice provisions in Article GC9.4.

GC9.8.1 Final Invoices. The District will review Contractor's Proposed Final Invoice. Any changes or corrections found necessary will be presented to the Contractor for its consideration. Within 10 days thereafter, Contractor shall submit a final invoice incorporating any changes or corrections made by the District together with any additional claims resulting therefrom. Upon approval by the District, this will become the Approved Final Invoice.

GC9.8.2 Withholding for Unpaid Claims.

- (a) If the Contractor files no claims within 30 days after

Acceptance by the District, and agreement is reached on all questions regarding the final invoice, or upon final determination of all Contractor's claims, the District shall pay the entire sum found due on the Approved Final Invoice including the amount, if any, allowed on claims. However, the District shall continue to withhold sums sufficient to pay any claims filed pursuant to Sections 3082 et seq. of the State Civil Code.

- (b) Final payment will be made within 15 days after District's approval of the final invoice, or 60 days after Acceptance, whichever is later; provided, however, if an Approved Final Invoice has not been submitted within 60 days after Acceptance by the District, the District may elect to make payment of sums not in dispute (except the District will continue to withhold sums sufficient to pay unpaid claims filed pursuant to Section 3082 et seq. of the State Civil Code) without prejudice to the rights of either the District or the Contractor in connection with such disputed sums.
- (c) Except as otherwise required by applicable law, interest shall not accrue in favor of the Contractor with respect to any claim asserted by the Contractor that has not been reduced to judgment.
- (d) In the event the Contractor's claim which the District does not allow exceeds \$1 million, the Contractor shall, within 15 days of final payment, request in writing a meeting with the District. This meeting shall occur within 60 days of final payment and shall be attended by the Chief Executive Office of the Contractor or an individual specifically designated by the Chief Executive Office, and the General Manager of the District or an individual specifically designated by the General Manager. Among other things, the parties shall consider at this meeting whether any other dispute resolution process is appropriate. Contractor shall file no lawsuit against the District, and the time for filing any lawsuit under Article GC9.4.4 and under applicable law shall not commence until 60 days after final payment or after the parties meet, whichever occurs first.

GC9.8.3 Notices. The notices provided for in Articles GC9.4 and GC9.8 hereof shall be mailed or personally delivered as follows:

- (a) If to the Contractor, to the address to which it requests notice to be sent in the Bid for the Contract; and
- (b) If to the Engineer, to the representative of the District designated in the Notice to Proceed, at the address therein set forth; with a copy to San Francisco Bay Area Rapid Transit District, 800 Madison Street, P.O. Box 12688, Oakland, California 94604-2688, Attention: Materials Management and Procurement Office.

New addresses may be substituted for those set out herein at any time upon written notice delivered pursuant to this Article.

GC9.9 Records and Audit. The Contractor shall maintain detailed books and records in accordance with generally

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accepted accounting principles and the Contract Documents; including all records reasonably necessary or desirable for the District to verify the amounts of compensation or schedule revision required under the terms of the Contract. Contractor shall permit the District and its authorized representatives to audit, inspect, examine and copy Contractor's books, records, accounts and any and all data relevant to the Contract at any reasonable time and shall provide such assistance as may be reasonably required in the course of such inspection including the right to interview personnel. The District further reserves the right to examine, and re-examine said books, records, accounts and data during the three year period following the final payment under the Contract and until all pending matters are closed, and Contractor shall in no event dispose of, destroy, alter or mutilate said books, records, accounts and data in any manner whatsoever for three years after the final payment of the Contract and until all pending matters are closed. No additional compensation will be provided to the Contractor for compliance with the requirements of this Article. The Contractor shall insert in any Subcontracts the clauses set forth in this Article, and also a clause requiring all Subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in this Article. Failure of the Contractor or any of its Subcontractors to comply with the provisions of this Article GC9.9 may result in the suspension of work related to the audit, and any delay in completion of the Work resulting from such suspension shall be the responsibility of the Contractor. The cost of any reaudit required by Contractor's or Subcontractor's failure to comply with this Article GC9.9 shall be borne by the Contractor. Alternatively, BART may, at its sole discretion, elect to pay only the verifiable direct costs of work related to the audit until the audit requirements are met and any necessary audit has been successfully completed.

GC9.9.1 Audit by State. Pursuant to State Government Code Section 8546.7, the parties to the Contract shall be subject to the examination and audit of the State Auditor, at the request of the District or as part of any audit of the District by the State Auditor, for a period of three years after final payment under the Contract. The examination and audit shall be confined to those matters connected with the performance of the Contract, including, but not limited to, the cost of administering the Contract.

GC9.9.2 Defective Cost and Pricing Data. The following provisions govern the submission of defective cost and pricing data by the Contractor in connection with any request for payment under any of the provisions of the Contract.

(a) "Cost and pricing data" are those facts that prudent buyers or sellers would reasonably expect to have a significant effect on price negotiations at the time price agreement is reached.

- (b) In all cases where payment to the Contractor by the District, or the determination of a credit owed to the District by the Contractor, is based, in whole or in part, directly or indirectly, on the Contractor's submission of cost and pricing data to the District, the Contractor certifies that cost and pricing data are accurate, current, and complete as of the date of submission of the data.
- (c) The Contractor is under a continuing duty until the time of price agreement to update such data if the submitted data is determined at any time to be inaccurate, not current, or incomplete
- (d) If the Contractor knowingly or with willful disregard submits data that do not comply with the requirements of this Article GC9.9 and such data results in an increase in amount of payment made to the Contractor by the District, the District may retroactively reduce such payment by the amount of the increase.
- (e) This remedy is in addition to , and not in lieu of the remedies provided by Sections 12650, et seq., of the Government Code , pertaining to "False Claim Actions".
- (f) All costs, including those of Subcontractors at any tier submitted to the District for reimbursement, negotiation, or claim settlement shall be in accordance with the cost principles of 48 CFR Part 31. For the purpose of reimbursing allowable costs, the term "costs" includes only: 1) those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check or other form of actual payment for items or services purchased directly for the Contract; 2) when the Supplier is not delinquent in paying costs of Contract performance in the ordinary course of business, costs incurred, but not necessarily paid for materials issued from the Supplier's inventory for use of the Contract, direct labor, direct travel, other direct in-house costs, properly allocable and allowable indirect costs recorded in the Supplier's records, and payments to Subcontractor under similar cost standards. Supplier contributions to any pension or other postretirement benefit, profit sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes provided that Supplier pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Supplier actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Supplier actually makes the payment.

GC9.10 Headings, Index, and Table of Contents. The headings to the individual Articles of the General Conditions, as well as the Index and Table of Contents, are for convenience of reference only, and shall not affect the construction or interpretation of any provisions of the General Conditions.

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