

GENERAL CONDITIONS (SERVICES)

Note: * = Flow-down requirement as defined in the Article entitled SUBCONTRACTORS AND SUPPLIERS herein

GC-01 GLOSSARY OF TERMS*

GC-01-A Abbreviations And Symbols

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

GC-01-B Definitions

Acceptance	Documentation prepared by Metro or its Authorized Representative attesting to the completion of all of the Services or Work under the Contract or a CWO or a specified portion thereof.
Alternative Disputes Resolution:	Means for settling a disputed claim which may include arbitration, mediation or other recognized means for settling a dispute.
Amendment:	A document mutually agreed to by the Parties modifying the Contract.
Approve:	To confirm documents presented by and/or actions of the Contractor related to the Work under the Contract or CWO.
Assessment:	A cost imposed on the Contractor for non-compliance with certain contractual requirements.
Authorized Representative:	Person or firm empowered to act for or in the place of the named business or governmental entity.
Chief Executive Officer:	The Chief Executive Officer (CEO) of Metro.
Claim:	A written demand by one of the Contracting Parties

for:

1. Time extension; and/or
2. Payment of money.

Consultant	One that provides Services or Work to Metro, also defined as the Contractor.
Consultant Change Notice (CCN):	A document issued by Metro to the Contractor detailing a proposed change to the Contract or CWO.
Contract:	Written agreement executed by Metro and the Contractor which sets forth the rights and obligations of the parties in connection with the Services and Work, and which includes the Contract Documents.
Contract Work Order (CWO):	The document issued by Metro for each separate assignment detailing the Scope of Work, price and completion time.
CWO Period of Performance:	The total time period allowed for completion of the Work, including all authorized time extensions, as specified in each CWO.
CWO Price:	The not-to-exceed amount agreed to by the Parties to perform the Scope of Work.
Contracting Officer:	The CEO or a designated representative who is authorized and empowered to execute contracts, contract amendments, CWOs, CWO Revisions, WACNs, and agreements on behalf of Metro.
Contractor:	The individual, firm, partnership, corporation, joint venture or combination thereof, referred to throughout the Contract in the singular and by the neuter term "it", that has entered into the Contract with Metro.
Cure Notice:	Written notice from Metro to the Contractor to correct Work performed not in conformance with the Contract or CWO.
Days:	Unless otherwise stated, "days" shall mean calendar days. When a required submittal falls on a non-business day, submittal shall be on the next business day.

Design Professional (DP):	A person licensed as an architect, registered as a professional engineer, licensed as a land surveyor or otherwise licensed or registered in a professional discipline pursuant to the laws of the State of California.
DALP	Disadvantaged Business Enterprise Anticipated Level of Participation
Goods:	Equipment, material and/or products required to perform the Services. Goods may be furnished by Metro or required to be furnished by the Contractor.
Government Entity	Any federal, state, or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than Metro.
Home Office:	The home office(s) of the Contractor's firm.
Invoice:	A request for payment for Work performed.
Milestone:	An established event or occurrence that is associated with the Schedule as defined in the Contract or CWO.
Modification	Any written addition, deletion, adjustment or alteration to the Contract, whether arising out of the unilateral exercise by the MAT of any right under the Contract, or by mutual agreement/action executed by the Parties. A Modification may be unilateral or bilateral, and includes Change Orders, adjustments in quantities, extensions of time, administrative changes and adjustments, and all other actions and events that result in an alteration, correction or adjustment of the Total Contract Price or Time, any Contract term or process, or any other obligation of either Party.
Metro or MTA	The Los Angeles County Metropolitan Transportation Metro (Metro) or its successor, or any successor in interest, or its Authorized Representative.

Notice of Termination:	Written notice from Metro to the Contractor terminating the Contract or/CWO, or a portion thereof, either for convenience of Metro or for default due to the Contractor's failure to perform its contractual obligations.
Payment Application:	A request for payment for Work performed.
Parties:	Metro and the person(s), governmental entities, or business entities entering into the Contract.
Period of Performance:	The total time period allowed for completion of all Services or Work under the Contract or CWO, as specified in the Form of Contract or CWO.
Prime Design Professional (PDP):	A design professional with a written Contract directly with Metro.
Program:	Existing and planned rail transit system that is and will be operated by Metro.
Project:	A portion of Metro Transit System as defined in the Form of Contract
Provide:	In reference to Work to be performed by the Contractor, "provide" means to perform Work in accordance with the Scope of Services and the Scope of Work.
Request for Change (RFC):	A document issued by the Contractor to Metro detailing a proposed change to the Contract or CWO.
Request for Substitution:	Goods, service(s), or system(s) that the Contractor requests to use in lieu of that specified in the Contract.
Revision:	A document issued by Metro to the Contractor or mutually agreed to by the Parties modifying the Contract or CWO.
Schedule:	A time phased Project execution plan that identifies all activities necessary to implement a given Project in a logical time phased manner. The Contract or CWO Schedule provides the start and completion date of each activity and its Milestones. The Project Schedule shall include the Milestones for the entire Project.
Scope of Services (Services):	Description of the sum total of productive and operative efforts used to generate the results

specified, indicated, or implied in the Contract, including all technical and professional services, and Goods used during all related activities whether originally or subsequently Scheduled.

Scope of Work:	Description of the Work to be provided by the Contractor under the Contract or CWO.
Special Provisions:	Requirements applicable to the Contract that invoke, modify, and/or supplement the General Conditions
State:	The State of California.
Sub-consultant Design Professional (SDP):	Design professional hired by a prime design professional.
Subcontractor:	Any individual, firm, partnership, corporation, joint venture or combination thereof, other than employees of the Contractor, that enters into a legal agreement with the Contractor to furnish Work, labor or Goods as a portion of the Work. Unless otherwise specified, Subcontractors includes Subcontractors of any tier.
Supplier:	Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor, or Subcontractor that enters into a legal agreement with the Contractor and that manufacturers, distributes or furnishes tangible Goods as a portion of the Work, with Work usually limited to delivery and/or required testing.
Technical Review:	A technical quality and progress audit including, but not limited to, a check of budget versus expenses to date, technical progress, quality of work, Schedule assessment and a measurement of design hours per drawing, review of adherence to policies and procedures and safety requirements.
Total Contract Price (TCP):	The total compensation approved by Metro's governing board to be paid to the Contractor in accordance with the terms of the Contract (and Amendments thereto).
Transit System:	The entire fixed guideway rail transportation system, including right-of-way, pavement, tracks, structures, equipment appurtenances, and all other related property of Metro.

Work: The sum of all activities, Services and Deliverables, to be accomplished under the Contract or CWO.

Worksite: The location where the Contractor's Work will be performed as defined in the Contract or CWO(s). The term may include the location of work performed by others (i.e., the construction site of a Project).

GC-02 INTERPRETATION*

GC-02-A Information

1. Furnished By Metro:

Upon request by the Contractor, Metro shall furnish the Contractor any general information and data readily available to Metro or those under contract to Metro, which the Contractor determines, may be of use to the Contractor in the performance of the Work. Metro shall rely upon the Contractor to determine which of the general information and data readily available to Metro the Contractor requires for the performance of the Work hereunder. Metro makes no representations with respect to the reliability, accuracy, or completeness of any information or data it may furnish hereunder. The Contractor is entitled to rely on the information or data to the extent a professional engineer believes it is appropriate to do so. The Contractor is expected to apply its professional judgment and seek any clarification it deems necessary.

2. Furnished by Others:

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

GC-03 PRECEDENCE OF CONTRACT DOCUMENTS

See Form of Contract Article 1

GC-04 CONTRACT DOCUMENTS

GC-04-A Explanations

Should it appear that the Work to be performed or any relative matters are not sufficiently detailed or explained in the Contract, the Contractor shall request in writing from Metro a written explanation as may be necessary and shall conform to the explanation given.

GC-04-B Omissions And Misdescriptions

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

2. Terms

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

3. References within the Contract

References to Articles and Subarticles herein are made by citing the Title of the Articles only, e.g., a reference to this particular paragraph would be phrased "in the Article entitled 'INTERPRETATION,' which would necessarily be inclusive of all other paragraphs in this Article. However, where a reference is made to other paragraphs within the same Article, the reference is made as in the preceding sentence, i.e., "in this Article." References to other Sections of the Contract are made by citing the title of the Section.

GC-05 AUTHORITY OF THE CONTRACTING OFFICER

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

GC-06 METRO'S TECHNICAL REPRESENTATIVE (PROJECT MANAGER)

Metro shall provide a Project Manager and/or a technical representative for all technical aspects related to the performance of the Contract. The Contractor shall make such oral or written reports to Metro's technical representative with an information copy to Metro's Contract Administrator as may be requested by Metro or as specifically required by the Contract. ALL CONTRACTUAL MATTERS SHALL BE ADDRESSED TO THE DESIGNATED CONTRACT ADMINISTRATOR.

GC-07 INDEPENDENT CONTRACTOR

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

Metro reserves the right of prior approval of all subcontractors and retains the right to request Contractor to terminate any subcontractor, for any reason deemed appropriate by Metro, by so notifying Contractor in writing. Should said notification be submitted to Contractor, it shall terminate said subcontractor immediately.

GC-08 ORGANIZATIONAL AND KEY PERSONNEL

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

- D. If Metro provides office space to the Contractor, or requires Contractor to locate its office space in a specific location, then at all times during the performance of Work hereunder, only related Work shall be performed in such office space and Contractor shall not use such office space to perform non-Contract related work.

GC-09 SUBCONTRACTORS AND SUPPLIERS*

GC-09-A Documentation And Acceptance

The Contractor shall submit a copy of all executed subcontracts at any time within fourteen (14) days of execution regardless of value to Metro for fulfillment of the DALP and SBE Goals, and a copy of insurance certificates in accordance with the Exhibit to the Form of Contract entitled INSURANCE REQUIREMENTS. Failure to submit subcontracts and certificates within the required time period will result in the Subcontractor's not being permitted to perform Work on the Project.

GC-09-B Performance Of Work

The Contractor shall:

1. Be responsible to Metro for all acts and omissions of its own personnel, and of Subcontractors, Suppliers and their employees; and
2. Be responsible for coordinating the Work performed by Subcontractors and Suppliers.

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

GC-09-C Acceptance Of Substitution Of Subcontractor

1. The Contractor shall notify Metro in writing of any proposal to substitute a Subcontractor in place of a Subcontractor listed in the Contractor's Qualification/Proposal. Prior to such substitution the Contractor shall secure the acceptance of Metro. The Contractor shall submit the following information in a form similar to that contained in the Contractor's original Qualification/Proposal.
 - a. Name of Subcontractor
 - b. Location and Phone Number of Place of Business
 - c. Contact Person
 - d. Subcontractor's License(s) number and expiration date (if applicable)
 - e. Current Metro Contract Compliance Certification Status (if applicable)

f. The portion of the Services that will be performed by each Subcontractor.

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

2. Metro shall not be responsible for delays incurred by the Contractor because of a timely disapproval by Metro of a Subcontractor proposed by the Contractor, or for the late submittal for acceptance of a Subcontractor to Metro, or because of a Subcontractor's removal from the performance of the Work.
3. The Contractor shall not do any of the following without the prior written consent of Metro:
 - a. replace any previously accepted Subcontractor;
 - b. permit any previously accepted Subcontract to be assigned or transferred; and/or
4. However, the Contractor may perform the Work itself with qualified personnel, provided written permission is obtained from Metro prior to performance of the Work.

GC-09-D Flow-Down Requirements

1. The Contractor shall incorporate the following into each Subcontract and require insertion of same into all lower-tier Subcontracts:
2. All Articles, Subarticles or portions of the Contract noted by a star (*) shall be included in all Subcontracts of any tier.
3. All provisions required by law, regulation, rule, or the Contract shall apply to subcontracts and shall apply to all subcontracts of any tier.
4. By virtue of signing the subcontract, the following apply:
 - a. The Subcontractor acknowledges and agrees that all Work being performed by it under the subcontract shall be performed in accordance with the Contractor's Contract with Metro.
 - b. The Subcontractor agrees that it shall have the same duties and obligations to the Contractor with respect to its performance of its own Work as the Contractor has to Metro under its Contract.
 - c. The Contractor and the Subcontractor agree that Metro is the third party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the Subcontract for its own benefit. All guarantees and warranties, express or implied, shall inure to the benefit of both Metro and the Contractor during the performance of the Work; upon final completion

of the Work, such guarantees and warranties shall inure to the benefit of Metro.

The Contractor and the Subcontractor agree that nothing contained in the Subcontract shall be deemed to create any privity of the Contract between Metro and the Subcontractor, nor does it create any duties, obligations, or liabilities on the part of Metro to the Subcontractor except those allowed under California Law. In the event of any claim or dispute arising under the subcontract and/or the Contractor's Contract with Metro, the Subcontractor shall look only to the Contractor for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against Metro arising out of the subcontract.

GC-09-E This Article does not and shall not operate to relieve the Contractor of any duty or liability under the Contract nor does it create any duty or liability on the part of Metro. The Contractor shall have sole responsibility for promptly settling any disputes between its Subcontractors and between the Subcontractors and any of their Subcontractors.

GC-09-F No Subcontractor shall be permitted to perform the Work under the Contract until it, or the Contractor, has supplied satisfactory evidence of required insurance to Metro, in compliance with the Exhibit to the Form of Contract entitled INSURANCE REQUIREMENTS.

GC-10 PERMITS

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

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

GC-11 GOODS*

GC-11-A The Contractor shall furnish all Goods required to complete the Work, except those designated to be furnished by Metro. Unless otherwise indicated in the Contract or CWO, Goods incorporated into the Work shall be new, of good quality, and of the grade specified for the purpose intended. Unless otherwise specifically stated, reference to Goods or patented processes by trade name, make, or catalog number shall be regarded only as a means of establishing a standard of quality; such references shall not be construed as limiting competition. The Contractor may, at its option, use any Goods or process that is

equivalent to that named subject to the prior written acceptance by Metro. Metro shall be the sole judge of the quality and suitability of proposed alternative Goods or processes subject to the right of Metro to accept or reject such alternative.

GC-11-B Any Goods that may be purchased under the Contract shall be transported, handled, and stored by the Contractor in a manner that shall ensure the preservation of their quality, appearance, and fitness for the Work. All Goods shall also be stored in a manner that facilitates inspection.

GC-12 STANDARDS OF PERFORMANCE*

GC-12-A The Contractor shall perform and require its Subcontractors to perform the Work in accordance with the requirements of the Contract and in accordance with professional standards of skill, care, and diligence adhered to by firms recognized for their expertise, experience and knowledge in performing Work of a similar nature. The Contractor shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Work, it being understood that Metro will be relying upon such professional quality, accuracy, completeness, and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of the Contract.

GC-12-B Contractor hereby represents that it has made the necessary commitment, that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available or will make the necessary equipment, materials, tools, and facilities to perform the Work in an efficient, professional, and timely manner in accordance with the terms and conditions of the Contract.

GC-12-C All personnel shall have sufficient skill and experience to perform the work assigned to them. Contractor shall ensure that any individual performing work under the Contract requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the Work assigned to them.

GC-12-D If any Work provided by the Contractor is deficient because of the Contractor's or a Subcontractor's failure to perform the Work in accordance with the above standards, Metro shall report such deficiencies in writing to the Contractor. Metro thereafter may:

1. Have the Contractor re-perform such Work at the Contractor's own expense; or
2. Have such Work performed in accordance with the Article entitled TERMINATION FOR DEFAULT herein, by others and the costs thereof charged to and collected from the Contractor.

GC-12-E Corrected or re-performed Work shall be subject to the above standards of performance.

GC-12-F The Contractor shall provide such specific standards of performance as may be set forth in individual CWOs as agreed to by the parties. If parties cannot agree Metro shall unilaterally establish them.

GC-12-G Metro shall have the right, in its absolute discretion, to require the removal of Contractor's personnel at any level assigned to the performance of the Services or Work, if Metro considers such removal necessary in the best interests of the Program and requests such removal in writing. Such personnel shall be promptly removed from the Project by the Contractor at no cost or expense to Metro. Further, an employee who is removed from the Project for any reason shall not be re-employed on the Program.

GC-13 UNAUTHORIZED ACTIONS*

Any action taken by the Contractor or its Subcontractors not in conformance with the terms and conditions of the Contract will be considered as unauthorized and at the sole expense of the Contractor. Contractor or its Subcontractors will not be compensated for any actions deemed by Metro to be unauthorized. No extensions of time will be granted under the Contract or CWO due to unauthorized actions.

No Metro employee or officer, except the Contracting Officer, may authorize any Amendments to the Contract, issue a CWO or make Revisions to CWOs.

GC-14 PERIOD OF PERFORMANCE

A. Neither party hereto shall be considered in default in the performance of its obligations with respect to schedule, to the extent that the performance of any such obligation is prevented or delayed by an excusable delay. Should Contractor's Work be delayed by an excusable cause, Contractor's schedule for completion of tasks affected by such delay may be extended. Excusable delays may include, but are not limited to, Acts of God or acts or failures to act of government agencies or Metro in either their sovereign or contractual capacities; fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, civil disturbance; but, in every case, the failure to perform must be reasonably beyond the control, and without the fault or negligence of the Contractor.

B. Within 30 days after the last day of delay, the Contractor shall furnish Metro with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract references, and the measures taken to prevent or minimize the delay. Failure to submit such information shall be sufficient cause for denying the delay claim.

GC-15 INSPECTION OF WORK (ACCEPTANCE)*

GC-15-A Metro reserves the right to inspect all and every part of the Work at any time during the performance and after completion, at its discretion.

GC-15-B If the Work or any parts thereof have not been performed in accordance with the Contract, the Contractor will be notified in writing that such Work is rejected. Thereupon, the Contractor shall take the necessary corrective action. Metro shall not be obligated to make any inspections, however, and neither the inspection of the Work, nor the lack thereof, shall relieve the Contractor of its responsibility for performing and providing the Work in accordance with the terms of the Contract.

GC-15-C Metro shall not be deemed to have accepted the Contractor's performance of the Work unless Metro or its designated representative has given written notice of final acceptance of the Work to the Contractor. No payment in whole or in part shall be construed to be an acceptance of the Work.

GC-15-D Metro shall have access, at all reasonable times, to the Contractor's calculations, supporting materials, data, and information concerning the Work, including computer programs and printouts, which Metro determines are required to review the Work properly and expeditiously. The Contractor shall furnish sufficient and convenient facilities for such inspection and review, and shall grant Metro's designated representatives free access at all reasonable times to all locations where the Work is performed.

GC-15-E Prior to the release of Work or issuance of a CWO, Metro and the Contractor shall determine which required reports will be submitted to Metro in draft form before final submission of the report.

GC-16 FINAL ACCEPTANCE*

GC-16-A Final Acceptance Of Work

When the Contractor determines that all Work as authorized in the Contract or CWO is fully completed including all required submissions and deliveries to Metro specified in the Contract or CWO, the Contractor shall give Metro a written Request for final Contract or CWO Acceptance within ten (10) working days thereafter, specifying that the Work is completed and the date on which it was completed. Within ten (10) days after the receipt of the Request for Final Contract or CWO Acceptance, Metro will commence a final review of the Work and, within 60 days will either:

1. Give the Contractor a final Contract/CWO Acceptance; or
2. Advise the Contractor in writing of any outstanding item or items which must be furnished, completed or corrected at the Contractor's cost.

Upon submittal of the request for final Contract/CWO Acceptance, the Contractor shall make no additional charges for Work under the Contract/ CWO. Metro shall not pay for any additional charges or be liable for any costs incurred after the date of receipt of the request for final Contract/CWO Acceptance of Contract/CWO Work.

This procedure shall comply with Metro's procedure entitled Services Contract Close-out in effect at the time of the request for Final Acceptance and shall be

repeated until such time as Metro is satisfied that GC-17-B Final Acceptance of CONTRACT

GC-16-B Final Acceptance Of Contract

When Metro determines that all Work authorized under the Contract has been completed and Metro requires no further work from Contractor, or the Contract is otherwise terminated or expires in accordance with the terms of the Contract, Metro shall give the Contractor written notice that the Contract will be closed out. Contractor shall submit all outstanding Billings, Work submittals, Deliverables, reports or similarly related documents as required under the Contract and any CWO, within ninety (90) days of receipt of notice of Contract close-out. Upon Metro's receipt of Contractor's submittals under this Article, Metro shall commence a closeout audit of the Contract within one hundred twenty (120) days after final submission of the last Contractor's or Subcontractor's overhead rates and will either:

1. Give the Contractor final Contract acceptance; or
2. Advise the Contractor in writing of any outstanding item or items which must be furnished, completed or corrected at the Contractor's cost.

This procedure shall comply with Metro's procedure entitled Services Contract Close-out. Notwithstanding the final Contract/CWO Acceptance the Contractor will not be relieved of its obligations hereunder, nor will the Contractor be relieved of its obligations to complete any portions of the Work, the non-completion of which were not disclosed to Metro (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise); and the Contractor shall remain obligated under all those provisions of the Contract which expressly or by their nature extend beyond and survive final Contract and/or CWO Acceptance.

GC-16-C Any failure by Metro to reject the Work or to reject the Contractor's Request for final Contract or CWO Acceptance as set forth above, shall not be deemed to be Acceptance of the Work by Metro for any purpose nor imply Acceptance of, or agreement with, the Contractor's Request for final Contract and/or CWO Acceptance.

GC-17 SAFETY*

GC-17-A The Contractor shall at all times conduct its operations in such a manner as to avoid risk of bodily harm to persons or damage to property. The Contractor shall promptly take all reasonable precautions to safeguard against such risks and shall make regular safety inspections of its operations. The Contractor shall be solely responsible for the discovery, determination and correction of any unsafe conditions caused by the Contractor's performance of the Work.

GC-17-B In addition, the Contractor shall comply with all applicable safety laws, standards, codes, rules, and regulations, including any safety program established by Metro. The Contractor shall cooperate and coordinate with Metro and with other Metro Contractors on safety matters and shall promptly comply with any specific safety

instructions or directions given to the Contractor by Metro. Notwithstanding, the construction contractor shall remain responsible for the construction site safety.

GC-17-C The Contractor shall inform its personnel of Metro safety practices and the requirements of Metro's safety program. If any of the Contractor's personnel are required to visit any Worksites, the Contractor shall furnish suitable safety equipment and enforce the use of such equipment by those personnel.

GC-18 WARRANTY*

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

GC-19 RIGHTS IN PROPERTY*

GC-19-A Title

1. All property purchased by the Contractor for Metro, shall be hereinafter referred to as Metro Property. Title to Metro Property shall pass to and vest in Metro upon the vendor's delivery and acceptance of such property by the Contractor.
2. Title to Metro Property shall not be affected by its incorporation into or attachment to any property not owned by Metro, nor shall Metro Property become a fixture or lose its identity as personal property by being attached to any real property.
3. The title transferred as described above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances. The Contractor shall not pledge or otherwise encumber the items in any manner that would result in any lien, security interest, charge, and/or claim upon or against said items.
4. The Contractor shall promptly execute, acknowledge, and deliver to Metro proper bills of sale or other written instruments of title in a form as required by Metro; said instruments shall convey to Metro title to material free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

GC-19-B Metro Property shall be used only for performing Work on the Contract or CWO, unless otherwise provided in the Contract or approved by Metro's Contract Administrator.

GC-19-C PROPERTY ADMINISTRATION

1. The Contractor shall be responsible and accountable for all Metro Property provided under the Contract and shall submit an inventory list, or revised list, in a form acceptable to Metro's Contract Administrator within thirty (30) days of acquisition of Metro Property.
2. The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Metro Property in accordance with sound business practice.
3. If damage occurs to Metro Property, the Contractor shall replace the items not otherwise covered by any warranties, or the Contractor shall make the necessary repairs at Metro's direction, all at no additional charge to Metro.

GC-19-D Metro and all its designees shall have access at all reasonable times to the premises in which any Metro Property is located for the purpose of inspecting Metro Property.

GC-19-E Upon completing the Contract or CWO or at such earlier dates as may be fixed by Metro: (1) the Contractor shall prepare and submit a final inventory list of all Metro property which includes the property's description, location and condition, and; (2) the Contractor shall prepare for shipment, and deliver F.O.B. destination, Metro property as may be directed or authorized by Metro.

GC-20 EXTENTION OF TIME

GC-20-A The Contractor will be granted an extension of time for any portion of a delay in completion of the Work caused by acts of a public enemy, wars, civil disturbances, fires, floods, earthquakes, epidemics, quarantine restrictions, freight embargoes, strikes, weather more severe than normal, any other cause not in the reasonable control of the Contractor or acts of God, providing that the:

1. Aforesaid causes were not foreseeable and did not result from the fault or negligence of the Contractor;
2. Contractor has taken reasonable precautions to prevent further delays owing to such causes; and
3. Contractor notifies Metro in writing of the cause(s) for the delay within five (5) days from the beginning of any such delay.

GC-20-B Claims for additional compensation shall be limited to the costs incurred during a Metro approved extension of time measured at end of period of performance not at time of delay.

GC-20-C An extension of time will not be granted for a delay described above caused by a shortage of Goods, except Metro-furnished Goods, unless the Contractor supplies Metro with documented proof that it made every effort to obtain such Goods from every known source within reasonable distance of the Work. The

Contractor shall also submit proof, that the inability to obtain such Goods when originally planned, did in fact cause a delay in final completion of the Work that could not be compensated for by revising the sequence of its operations. Only the physical shortage of Goods will be considered as a basis for an extension of time. No consideration will be given to any claim that Goods could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of Metro that:

1. Such Goods could have been obtained only at exorbitant prices or;
2. The prices were entirely inconsistent with current rates, taking into account the quantities involved and the usual practices employed in obtaining such quantities; and
3. Such facts could not have been known or anticipated at the time the Contract or CWO was executed.

GC-20-D In case the Contractor is actually and necessarily delayed by any act or omission on the part of Metro, or others under contract with Metro and providing that the Contractor notifies Metro in writing within five (5) days from the beginning of any such delay, specifying the act or omission causing such delay, the time for completion of the Work shall be extended accordingly, and an adjustment shall be made to the TCP or CWO Price for any increase in the cost of performance of the Services or Work (excluding profit) necessarily caused by such delay. If the delay in the performance of the portion of Work described in the Contractor's five (5) day notice has been similarly delayed by Contractor-induced causes, including but not limited to the fault or negligence of the Contractor or any of its Subcontractors, the time for completion of the Work will be extended for the period of any such concurrent delay with no adjustment to the TCP or CWO Price.

GC-20-E Within thirty (30) days after the last day of a delay, the Contractor shall supply Metro with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract and CWO references, and the measures taken to prevent or minimize the delay. Failure to submit such information shall be sufficient cause for denying the delay claim. Metro will ascertain the facts and the extent of the delay; its findings thereon will be final and conclusive unless the Contractor disputes the decision. All time extensions must be approved by Metro prior to Contract or CWO Final Acceptance.

GC-20-F No extension of time will be granted under this Article for any delay in which remedies are included or excluded by any other provision of the Contract. Only the actual delay necessarily resulting from the causes specified in this Article shall be grounds for extension of time. In case the Contractor is delayed at any time or for any period by two or more of the causes specified in this Article, the Contractor shall not be entitled to a separate extension for each one of the causes; only one extension will be granted for the entire delay.

The Work shall continue and be carried on in accordance with all the provisions of the Contract. The Contract shall remain in full force and effect during the continuance and until the completion and Final Acceptance of the Services or

Work covered by the Contract or CWO, unless formally suspended or terminated in accordance with the terms of the Contract. Permitting the Contractor to finish the Work, or any part thereof, after the time fixed for completion or after the date to which the time for completion may have been extended and/or making payments to the Contractor after any such periods shall not constitute a waiver on the part of Metro of any rights under the Contract.

GC-20-G Neither the granting of an extension of time beyond the date fixed for the completion of any part of the Work nor the performance and Acceptance of any part of the Work after the time specified for the completion of the Work shall be deemed to be a waiver by the authority of Metro's right to terminate the Contract or CWO for abandonment or failure to complete within the total time specified or to impose and deduct damages as may be specified.

GC-20-H In all cases that the Contractor either claims or intends to claim a delay, the Contractor shall submit to Metro at the earliest possible date and supplement thereafter as information becomes available:

1. An analysis of the impact of the claimed delay event upon the Contractor's then current Schedule, identifying the affected activities and the actual impacts; and
2. Proposals to minimize the effects of the claimed delay.

GC-21 CHANGES

GC-21-A The term "Change(s)," as used herein, means substitutions, additions, or deletions which result in revisions to the Contract or CWO. Change does not mean work performed by the Contractor to correct defective Work caused by the Contractor's negligent acts, errors or omissions.

GC-21-B Metro may at any time, and from time to time without invalidating the Contract or CWO, make Changes in the Scope of Work. Metro and Contractor will endeavor to reach mutual agreement regarding costs and Schedule associated with the Change; however, Metro reserves the right to direct the Contractor to perform the Changed Work. Such Changes, including any increase or decrease in the amount of the Contractor's compensation and/or the period of performance, shall be incorporated into the Contract or CWO through the issuance of a Contract Amendment or CWO Revision. All of the provisions of the Contract shall apply to Changes. Upon receipt of a Contract Amendment or CWO Revision, approved by Metro, the Contractor shall continue performance of the Scope of Work as modified by the Amendment.

GC-21-C If a Fixed Fee as defined in the Compensation and Payment section is a part of the compensation for the Contract or CWO, it is the agreed intent of the parties that the Fixed Fee is an amount fixed at the inception of a CWO with respect to the Work planned and Scheduled as set forth in the Scope of Work and is not intended to vary with actual costs for the Work. A Contract Amendment or CWO Revision issued hereunder may, but will not automatically; result in a Change to the Fixed Fee.

GC-21-D Contractor's Cost and Schedule Proposal: The Contractor shall submit a Contractor's Cost and Schedule Proposal (utilizing the Form 60 provided in Compensation and Payments Provisions) to Metro within ten (10) days after receipt of a change request. The proposal shall detail price and scheduling information showing all of the cost and time ramifications of the Changes shown in the request. If any prices or other aspects are conditional, such as orders being made by a certain date or the occurrence of a particular event at a specified time, the Contractor shall identify these conditions in its proposal. The components to be used by the Contractor in preparing the proposal shall be those set forth in the Compensation and Payment Provisions and shall be presented in such a manner that all elements of the proposal can be easily identified and certified upon request. The submittal shall include certified current cost or pricing data as described in the Article entitled AUDITS herein.

GC-21-E Contract Amendment Or CWO Revision:

A Contract Amendment shall be agreed to by the Parties to reflect changes in the Contract terms and/or Scope of Services.

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

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

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

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

GC-21-F Except as expressly provided herein, no order, statement, or conduct of any person shall be treated as a Change under the Contract or a CWO or entitle the Contractor to any adjustment under the Contract or a CWO.

GC-22 AUDIT SOFTWARE

At the request of Metro, the Contractor, Subcontractors and Suppliers shall allow installation of computer assisted audit techniques (CAAT) software supplied by Metro on its computer systems during the audit of Metro's contract. In lieu of installation of CAAT software on the Contractor's, Subcontractor's or Supplier's Home Office computers, a verified backup copy of its computer systems' database(s) can be supplied. Upon reasonable advance notice, the Authorized Auditors shall have access at all reasonable times to this software, database or verified copy for the purpose of auditing and verifying the Contractor's costs claimed to be due and payable hereunder. Prior to the start of an audit, the CAAT software will be supplied to the Contractor, its Subcontractors and Suppliers to allow for testing and review on its computer system. Once the audit is complete, the software will be removed from the Contractor's, its Subcontractors' and its Suppliers' computer system. The software will be installed permanently at the Program Office in order to assist the Authorized Auditors in the review of the Program Office costs.

GC-23 NOTICE OF INTENT TO CLAIM AND CLAIMS

- A. The Contractor shall give to Metro a written notice of potential claim within five (5) days of any act or event for which it intends to seek adjustment in the Contract/CWO price, terms, or schedule. The written notice shall set forth the basis of the claim and an estimate of any costs involved. The claim shall be filed within 30 days of the act or event and shall be in sufficient detail to allow Metro to evaluate the claim. The Contractor shall also furnish any additional information relating to the claim as Metro may request. Failure of the Contractor to comply with these requirements shall be sufficient cause for denying the Contractor's claim.
- B. Metro shall, within 30 days of the receipt of the claim, render a decision or provide an estimate of when a decision will be made. If no decision is made within 30 days of the filing of the claim, or within any extended period mutually agreed to in writing by the parties, the claim shall be deemed rejected by Metro. The Contractor shall proceed diligently with performance of the Contract/CWO, pending resolution of any claim or appeal or action ensuing under the Contract/CWO.

GC-24 RESOLUTION OF DISPUTES

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

GC-25 SUSPENSION*

- GC-25-A** The requirements of this Article are in addition to other audit, inspection, and record keeping requirements specified elsewhere in the Contract.

GC-25-B If Metro notifies Contractor that work on a particular portion of the Project will be suspended for a period to exceed one hundred eighty (180) days, Contractor shall immediately notify Metro that key personnel working on that portion of the work can either:

- (1) Be moved to support another portion of the Program, as approved by Metro, or
- (2) Be released because there is no need for the services of the specific key personnel on the Program

If suspension is less than one hundred eighty (180) days, Contractor and Metro shall agree upon the short-term duties of all affected personnel.

GC-25-C The Contractor shall comply immediately with any written order it receives from Metro suspending the Work and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of suspended Work. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction of Metro.

GC-25-D The Contractor shall be allowed an equitable adjustment in the TCP and CWO Price (not to include profit) and/or an extension of the Contract or CWO Time, directly attributable to any suspension and/or to recover reasonable costs incurred during suspension, provided that the Contractor makes a Claim as provided in the Article entitled NOTICE OF INTENT TO CLAIM AND CLAIMS herein. However, no adjustment shall be made under this Article for any suspension, delay or interruption to the extent that Contractor's performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment or an extension of time is provided for or excluded under any other term or condition of the Contract.

GC-25-E Submittal of an RFC by the Contractor for an equitable adjustment of the TCP or CWO Price or the Contract or CWO Time extension shall be filed in compliance with the Article entitled CHANGES herein; and within twenty (20) days after the end of the Work suspension. The provisions of this Article shall only apply if a written order of suspension is issued by Metro.

GC-25-F Metro will make partial payments against costs authorized by Metro and incurred by the Contractor in connection with the suspended portion of the Contract or CWO, so long as the aggregate of such payments does not exceed the authorized value of the Contract or CWO.

GC-26 TERMINATION FOR CONVENIENCE OF Metro*

GC-26-A The performance of the Services or Work under the Contract or a CWO may be terminated at any time, in whole or in part, as determined by Metro in its sole discretion. Such termination will be accomplished by delivery of a Notice of Termination to the Contractor, specifying the extent to which performance of the

Services or Work under the Contract or CWO shall be terminated and the date upon which such termination shall become effective.

GC-26-B After receipt of a Notice of Termination, except as otherwise directed by the AUTHORITY, the Contractor shall:

1. Stop Work under the Contract or a CWO on the date and to the extent specified in the Notice of Termination.
2. Place no further orders or Subcontracts for Goods or Work, except as may be necessary for completion of such portions of the Services or Work expressly excluded from the Notice of Termination.
3. Communicate any Notice of Termination to the affected Subcontractors and Suppliers, and any other parties, at any tier.
4. Terminate all orders and Subcontracts that relate to the performance of the Work terminated by the Notice of Termination.
5. Settle outstanding liabilities and Claims arising out of such termination of orders and Subcontracts, with the acceptance of Metro if required (which acceptance shall be final for the purposes of this Article).
6. Assign to Metro in the manner, at the times, and to the extent directed by Metro all of the rights, titles, and interests of the Contractor under the orders and Subcontracts so terminated; in which case Metro will have the right, at its sole discretion, to settle or pay any or all Claims arising out of the termination of such orders and Subcontracts.
7. Transfer title and deliver to Metro in the manner, at the times, and to the extent directed by it:
 - a. Work in process, completed Work, and other Goods procured as a part of, or acquired in connection with, the performance of the Work terminated; and
 - b. The completed or partially completed plans, drawings, information, and other items that would have been required (per the Scope of Services and Scope of Work) to be furnished to Metro if the Contract or a CWO had been completed.
8. Use its best efforts to sell the Goods of the types referred to above in the manner, at the times, to the extent, and at the price(s) directed or authorized by Metro, providing that the:
 - a. Contractor is not required to extend credit to any purchaser;
 - b. Contractor may acquire any such Goods under the prescribed conditions; and/or

- c. Proceeds of any such transfer or disposition are applied or otherwise credited to reduce payments made by Metro to the Contractor under the Contract or CWO.
9. Take any action that may be necessary, or that Metro may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which Metro has or may acquire an interest.
10. Comply with all other requirements of Metro as may be specified in the Notice of Termination.
11. Complete performance of that portion of the Work that has not been terminated by the Notice of Termination, as applicable and in accordance with the Contract.

GC-26-C If the termination is for the convenience of Metro, Contractor shall submit a final invoice within 60 days of termination and upon approval by Metro, Metro shall pay Contractor a percentage of the total Contract price based on the percentage of the Work completed prior to the effective date of termination and other costs reasonably incurred by the Contractor to implement the termination.

GC-26-D Upon failure of the Contractor to submit its termination claim within the time specified, Metro will determine the amount due the Contractor, if any, on the basis of information available, and will pay the Contractor the amount so determined. Such payment shall constitute payment in full for the Work performed under the Contract or CWO. Any allowable costs incurred prior to the date of termination shall be handled in accordance with the Compensation and Payment Provisions.

GC-26-E Subject to the provisions of the above Subarticle, the Contractor and Metro may agree upon the total or partial amount to be paid to the Contractor by reason of the total or partial termination of the Work pursuant to this Article. The Contract or CWO will be amended or revised accordingly and the Contractor will be paid the agreed-upon amount. Nothing in the following Subarticle, which deals with the failure to reach agreement on the total amount to be paid to the Contractor, shall be deemed to limit, restrict, or otherwise determine or affect the amount that may be agreed upon pursuant to this Subarticle.

GC-26-F In the event of failure of the Contractor and Metro to agree on the total amount to be paid the Contractor by reason of the termination of Work pursuant to this Article, Metro will pay the Contractor the amounts determined by Metro as follows, exclusive of any amounts agreed upon in accordance with the preceding Subarticle:

1. The Contract or CWO Price allocable to the portion of the Work properly performed by the Contractor as of the date of termination, including overhead, and Fixed Fee or profit, as determined in accordance with the Compensation and Payment Provisions, reduced by any sums previously paid to the Contractor.

2. The cost of settling and paying Claims arising out of the termination of the Work under Subcontracts or orders as specified above, exclusive of the amounts paid or payable on account of Goods delivered or Work furnished by Subcontractors prior to the effective date of the Notice of Termination of Work under the Contract or CWO, which amounts are included in subarticle E of this Article.
3. Profit on the cost of Work performed is included in the amount determined in subarticle E of this Article. However, if the Contractor would have sustained a loss on the entire Contract or CWO had it been completed, the Contractor shall not be entitled to a profit and the settlement will be reduced to reflect the indicated rate of loss.
4. The reasonable cost of preserving and protecting property will also be paid, as well as any other reasonable costs incidental to the termination of the Work under the Contract or a CWO, including those reasonable expenses incurred to determine the amounts due.

GC-26-G Except to the extent that Metro will have otherwise expressly assumed the risk of loss, the fair value (as determined by Metro) of property that is destroyed, lost, stolen, or damaged (so as to become undeliverable to Metro or other buyer as described above) shall be excluded from the amounts paid to the Contractor.

GC-26-H In arriving at the amount due the Contractor under this Article, retention shall be made for the following:

1. The amount of the Claim that Metro may have against the Contractor in connection with the Contract or a CWO; and
2. The agreed upon price for and/or proceeds from the sale of Goods or other items acquired or sold by the Contractor that have not been otherwise recovered by or credited to Metro.

GC-26-I Under such terms and conditions as it may prescribe and at its sole discretion, Metro may make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract or a CWO whenever Metro decides that the aggregate of such payments is within the amount to which the Contractor is entitled hereunder. If the total of such payments is in excess of the amount finally agreed-upon or determined to be due under this Article, such excess shall be payable by the Contractor to Metro upon demand, together with interest at a rate equal to that set forth in California Code of Civil Procedure Section 685.010.

GC-26-J The Contractor shall not be entitled to anticipatory or consequential damages as a result of any termination under this Article. Payment to the Contractor in accordance with this Article shall constitute the Contractor's exclusive remedy for any termination hereunder. The rights and remedies of Metro provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.

GC-26-K Anything contained in the Contract or a CWO to the contrary notwithstanding, a termination under this Article shall not waive any right or claim to damages that Metro may have; Metro may pursue any cause of action that it may have by law or under the Contract.

GC-27 TERMINATION FOR DEFAULT*

GC-27-A Metro may terminate the Contractor's Work, in whole or in part, for default under any of the following circumstances:

- 1) Failure or refusal of the Contractor to perform any obligation required under the Contract or a CWO, or violation of any duty required of the Contractor under the Contract or a CWO.
- 2) Bad faith by the Contractor.
- 3) Violation by the Contractor of an order or requirement of Metro authorized by or within the scope of the Contract or a CWO.
- 4) Abandonment of the Contract or a CWO by the Contractor.
- 5) A filing by or against the Contractor of a petition in bankruptcy, reorganization, insolvency, conservatorship, or similar proceeding.
- 6) Failure of the Contractor to pay any amounts owing to any persons performing any portion of the Work, or the failure of the Contractor to pay its debts incurred on the Contract as they become due, providing that such failure continues for a period of ten (10) working days after written notice to the Contractor by Metro.
- 7) The attachment, levy, execution, or other judicial seizure of any portion of the Contractor's property, or any substantial portion of the other assets of the Contractor, which is not released, expunged, or discharged within a period of ten (10) working days.
- 8) Material failure to comply with any law, ordinance, rule, regulation, or order of a legal authority applicable to the Contractor, the Services, the Work, the Contract, a CWO, the Program or the Project.
- 9) Failure to indemnify any party that the Contractor is obligated to indemnify under the Article entitled LIABILITY AND INDEMNIFICATION herein or elsewhere under the Contract.
- 10) Failure to promptly correct or re-perform rejected Work.
- 11) Conviction of the Contractor or any of its officers, partners, principals, or employees for a violation of any federal, state or local safety law or regulation, or for a crime arising out of, or in connection with, the Work to be done or payment to be made under the Contract.

GC-27-B If Metro determines the Contractor is in default of the Contract or CWO, Metro will so notify the Contractor by issuing a Cure Notice describing the default. If the

Contractor fails to cure the default within five (5) days after receipt of such Cure Notice, or if the default cannot be cured within five (5) days, and the Contractor fails to commence to cure within five (5) days and diligently proceed to cure within the time Metro determines to be necessary, Metro may, by written notice, terminate the Contractor's right to proceed under all or such part of the Contract or CWO as Metro at its sole discretion deems to be in its best interest. Whether or not the Contract or a CWO or any part thereof is terminated, the Contractor shall be liable for any damage to Metro resulting from the Contractor's default.

GC-27-C Upon receipt of a Notice of Termination for default from Metro, the Contractor shall:

- 1) Stop all Work under the Contract or a CWO on the date and to the extent specified in the Notice of Termination.
- 2) Place no further orders or Subcontracts for Goods or Work, except as may be necessary for completion of such portions of the Services or Work expressly excluded from the Notice of Termination.
- 3) Communicate any Notice of Termination to the affected Subcontractors and Suppliers, and any other parties, at any tier.
- 4) Terminate all orders and Subcontracts that relate to the performance of Work terminated by the Notice of Termination.
- 5) Comply with all other requirements of Metro as may be specified in the Notice of Termination.

GC-27-D Upon Metro's termination of the Contract or CWO because of the Contractor's default under the Contract or a CWO, Metro shall have the right to complete the Work by whatever means and methods it deems advisable. Metro will not be required to obtain the lowest prices for completing the Work, but shall make such expenditures that, in Metro's sole judgment, best accomplish such completion.

GC-27-E If the termination is due to the failure of the Contractor to fulfill its contractual obligations, Metro may take over the Work, and complete the Work by contract or otherwise. In such case, the Contractor shall be liable to Metro for any reasonable costs or damages occasioned to Metro thereby. The expense of completing the Work, or any other costs or damages otherwise resulting from failure of the Contractor to fulfill its obligations, will be charged to the Contractor and will be deducted by Metro out of such payments as may be due or may at any time thereafter become due to Metro. If such costs and expenses are in excess of the sum which otherwise would have been payable to the Contractor, then the Contractor shall promptly pay the amount of such excess to Metro upon notice of the excess so due.

GC-27-F If the Contract or CWO is terminated as specified in this Article, Metro may require that the Contractor transfer title to and deliver the following items to Metro as directed: any Goods, fixtures, plans, drawings, information, reports, estimates, Contract or CWO rights and other items that the Contractor has specifically produced or acquired for the terminated portion of the Contract or a CWO and

would have been required to be furnished to Metro if the Contract or a CWO had been completed. The Contractor also shall, at its sole expense, protect and preserve property in its possession in which Metro has an interest.

GC-27-G If, after the notice of termination for failure to fulfill Contract obligations, it is determined that the Contractor has not so failed, the termination shall be deemed to have been effected for the convenience of Metro. In such event, adjustment shall be made as provided in Article entitled TERMINATION FOR CONVENIENCE herein.

The Contractor shall not be entitled to anticipatory or consequential damages as a result of any termination under this Article. Payment to the Contractor in accordance with this Article shall constitute the Contractor's exclusive remedy for any termination hereunder. The rights and remedies of Metro provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.

GC-28 ASSIGNMENT*

GC-28-A The Contractor shall not assign, transfer, convey, or otherwise dispose of the Contract or a CWO (or the right, title, or interest in it or any part of it) without the prior written consent and endorsement of Metro, which consent shall not be unreasonably withheld.

GC-28-B No right under the Contract shall be asserted against Metro, in law or in equity, by reason of any assignment of the Contract, or any part thereof, unless authorized by Metro as specified in this Article.

GC-28-C Any assignment of proceeds of the Contract shall be subject to all proper setoffs and withholdings in favor of Metro and to all deductions specified in the Contract or CWO. All monies withheld, whether assigned or not, shall be subject to being used by Metro for completion of the Work, pursuant to the terms of the Contract. In the event that Metro consents to such assignment of monies, written notice thereof shall be given by the Contractor to Metro at least ten (10) days before payment is due.

GC-29 ENVIRONMENTAL COMPLIANCE

GC-29-A The Contractor shall include the requirements of the following Subarticles in every Subcontract that is more than one hundred thousand dollars (\$100,000) and shall take such action as Metro directs to enforce these requirements.

GC-29-B The Contractor shall comply with all air, water, and noise pollution provisions set forth in the Scope of Services or Scope of Work.

GC-29-C Air Quality Control

1. The Contractor shall comply with all applicable standards, orders, and requirements issued under the Clean Air Act (42 USC § 7401); all applicable standards of the State of California; and all clarifications, mitigation

measures, and any other requirements approved by Metro in accordance with state and federal laws.

2. The Contractor shall comply with all rules, regulations, and ordinances of the South Coast Air Quality Management District (SCAQMD) and statutes of the State that apply to any Work performed pursuant to the Contract or CWO, including any air quality control rules, regulations, ordinances, and statutes specified in Section 11017 of the California Government Code. Contractor, Subcontractors, and Suppliers shall submit evidence to Metro that the governing air quality control criteria are being met; such evidence will be retained by Metro.
3. In the absence of applicable air quality control rules, regulations, ordinances, or statutes governing solvents, including but not limited to the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the Contract or CWO, the Contractor shall comply with the applicable material requirements of the SCAQMD. Containers of paints, thinner, curing compound, or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements.
4. The Contractor shall comply with California state law regarding pollution controls in purchasing new motor vehicles with Project funds.
5. Material to be disposed of shall not be burned.

GC-29-D Water Quality:

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

GC-29-E Environmental Protection Agency Regulations

1. The Contractor shall comply with all applicable regulations (40 CFR Part 15) of the Environmental Protection Agency (EPA).
2. The Contractor shall not use any facility in the performance of the Contract or CWO that is listed on the EPA List of Violating Facilities, unless and until the EPA eliminates said name of such facility from said listing. The Contractor shall promptly notify Metro of the receipt of any communication from the Director, Office of Federal Activities, EPA (or any successor agency), indicating that a facility to be used by the Contractor is under consideration for listing on the EPA List of Violating Facilities. The Contractor shall also report violations to Metro, to the FTA, and to the EPA Assistant Administrator for Enforcement.

GC-29-F Energy Conservation:

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

GC-30 HISTORICAL, ARCHAEOLOGICAL, PALEONTOLOGICAL, AND SCIENTIFIC DISCOVERIES*

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

GC-31 THE CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC*

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

GC-32 WHISTLEBLOWER REQUIREMENTS*

GC-32-A The Contractor shall not adopt any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee believes the information discloses violation or noncompliance with a state or federal regulation; nor shall an employer retaliate against an employee for taking such actions as set forth in the California Labor Code Sections 1101 et. seq.

GC-32-B The Contractor shall post and maintain all Metro Phone Hotline literature provided by Metro ("Hotline Literature") at place(s) of performance during the term of the Contract. All Hotline Literature is to be posted in prominent locations that are highly visible and accessible to Contractor's employees. Contractor shall not hinder or coerce its employees from using Metro Phone Hotline to voice ideas, suggestions, or concerns relative to the performance of any Metro contract. The Contractor shall provide access to Metro representatives for the purpose of verifying Contractor's adherence to this section. In the event Metro inspection finds the Contractor has failed to comply herewith, the Contractor shall correct such failures including, but not limited to, replacing Hotline Literature and sponsoring training sessions, with Metro representatives, on the use of Metro Phone Hotline.

GC-33 COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT*

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

GC-34 SEVERABILITY*

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

GC-35 GOVERNING LAW*

The Contract has been negotiated between Metro and the Contractor and shall be subject to the laws of the State of California.

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

GC-36 PUBLIC RECORDS ACT*

GC-36-A All records, documents, drawings, plans, specifications and other information relating to conduct of Metro's business, including information submitted by the Contractor shall become the exclusive property of Metro and shall be deemed public records. Said materials are subject to the provisions of the California Public Records Act (Government Code sections 6250 et. seq.). Metro's use and disclosure of its records are governed by this Act. Metro will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.

GC-36-B In the event of litigation concerning the disclosure of any information submitted by the submitting parties, Metro's sole involvement will be as a stakeholder, retaining the information until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be responsible for any and all fees for prosecuting or defending any action concerning the information, and shall indemnify and hold Metro harmless from all costs and expenses including attorneys' fees, in connection with any such action.

GC-37 LIABILITY AND INDEMNIFICATION*

GC-37-A Indemnification

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless Metro, its subsidiaries, and any of their respective members, directors, officers, employees and agents, from and against any and all Claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses, including but not limited to workers compensation suits, breaches of contract and any fees of accountants, attorneys or other professionals arising out of, or resulting from any act, omission, fault or negligence of the Contractor or any of its officers, Authorized Representative, employees, Subcontractors or Suppliers, or any person or organization directly or indirectly employed by any of them, in connection with or relating to, or claimed to be in connection with or relating to, the Services, the Work, the Contract, or the Program, including but not limited to any costs or liability on account of:

1. Personal injury to or death of any person (including employees of the parties to be indemnified) or for damage to or loss of use of property (including property of Metro); and
2. Metro's reasonable reliance upon the use of data or other information provided or delivered by the Contractor pursuant to the Contract or CWO.

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

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

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

GC-37-B Third Party Liability

Nothing contained in the Contract or CWO is intended to or shall have the effect of creating any rights in any third party against Metro. The inclusion of the Contract or any part thereof in any other document shall not be deemed to be creating or incorporating any obligation, duty, or liability on the part of Metro. The Contractor shall indemnify the AUTHORITY in accordance with the provisions of this Article against any claim made by any third party claiming rights under the Contract.

GC-37-C Joint Severable Liability

If the Contractor is a joint venture or partnership, each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of the Contractor that are assumed under or arise out of the Contract. Each of such venturers or partners waives notice of the breach or non-performance of any undertaking or obligation of the Contractor contained in, resulting from or assumed under the Contract, and the failure to give any such notice shall not affect or impair such venturer's or partner's joint and several liability hereunder.

GC-37-D Professional Liability

The Contractor shall be responsible for the professional quality, technical accuracy, completeness and coordination of all Work furnished by the Contractor (including the Work performed by Subcontractors on the basis provided herein) under the Contract or CWO. In addition to any other remedies provided Metro under the Contract, CWO or at law, the Contractor or Subcontractor shall correct or revise at no additional cost or fee to Metro any defective Work caused by the Contractor's or Subcontractor's negligent acts, errors or omissions in the performance of the Work hereunder. Neither Metro's inspection of, nor failure to inspect, review, accept, make payment for, any of the Work required under the Contract shall be construed to relieve the Contractor or Subcontractor of its obligations and responsibilities under the Contract or CWO for any negligent acts, errors and omissions in its performance of Work hereunder, nor operate as a waiver of any of Metro's rights under the Contract or of any cause of action arising out of the performance of the Contract. The Contractor or Subcontractor shall be and remain liable to Metro in accordance with applicable law for all damages to Metro caused by any failure of the Contractor or Subcontractor to comply with the terms and conditions of the Contract or CWO, or by the Contractor's or Subcontractor's negligent acts or errors or omissions in the performance of the Contract or CWO. With respect to the performance of Work by Subcontractors, the Contractor shall use its professional judgment, care and

prudence in approving and accepting such Work but shall also take all action necessary to ensure correctness/accuracy of Subcontractors work. The Contractor warrants that the Work performed hereunder is of high professional quality and has been performed in full conformity with all codes, rules, regulations and statutory requirements.

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

GC-37-E Investigation Of Potential Negligence

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

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

GC-37-F The Contractor acknowledges that the rights and remedies of the AUTHORITY specified in this Article are in addition to and do not limit any rights or remedies of Metro, afforded by the Contract or by law.

GC-37-G Warranty

Contractor Warranties: Contractor warrants that: it is aware of and understands the hazards which are presented to persons, property and the environment in the performing of transportation, storage, remediation and disposal Work as described within the Scope of Work of the Contract or CWO. It will transport, store, remediate and dispose of such materials in full compliance with all applicable governmental laws, regulations and orders. If the Scope of Work requires off-site storage or disposal, the selected storage and disposal facilities described in the work plan are now appropriately licensed and permitted to store and dispose of the waste, materials or hazardous substances detailed within the work plan. In the event the storage or disposal facility loses its permitted status

hereafter during the terms of the Contract or CWO, Contractor will promptly notify Metro of such loss.

GC-37-H Indemnification - Environmental Impairment Losses

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

GC-37-I Environmental Indemnity

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

GC-38 RIGHTS IN TECHNICAL DATA, PATENTS AND COPYRIGHTS*

GC-38-A All documents and materials prepared or developed by the Contractor and its subcontractors pursuant to the Contract shall become the property of Metro without restriction or limitation on their use and shall be made available upon request, to Metro at any time. Original copies of such shall be delivered to Metro upon completion of the Work or termination of the Work. The Contractor shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the written approval of Metro.

GC-38-B Metro shall have the right to use, duplicate, modify or disclose the technical data and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so except as limited by the Article entitled PUBLIC RECORDS ACT herein.

GC-38-C The Contractor shall agree to grant to Metro and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free license to publish, translate, reproduce, deliver, and use as they deem fit all technical data

covered by copyright supplied for the Contract. No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for Metro to use such in the manner herein described.

GC-38-D The Contractor warrants that the Work and Goods used in providing the Work shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against Metro, the Contractor shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by Metro, and indemnify and hold harmless Metro, its subsidiaries, agents and employees from all liability, damages, costs, and expenses associated therewith, including, but not limited to, defense costs and attorneys' fees.

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

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

The preceding subarticles shall not apply to Goods and/or processes furnished to the Contractor by Metro.

For Metro provided software, Metro, at its own cost, shall obtain any required license agreement(s). Metro shall indemnify, hold harmless and defend the Contractor from and against any and all Liability, damages, costs, and expenses, including but not limited to, defense costs and attorneys' fees, for or by any reason of any actual or alleged infringement of any United States patent or copyright, or any actual or alleged trade secret disclosure, arising from or related to the operation and utilization of Metro provided software, except for the unauthorized use of Metro provided software by the Contractor, its Director, Officers, employees, agents or representatives.

GC-39 SOFTWARE LICENSING AGREEMENT AND PROVISIONS FOR USE*

GC-39-A The Terms Used In This Article Are Defined As Follows:

1. Software: The computer programs and products required to be developed and delivered by the Contractor to Metro under the Contract, in object code (but excludes commercial software developed at private expense and not in the public domain).

2. Source Code Materials: A human-readable copy of the Software and related materials and documentation generated in preparing the Software, including programmer notes, flow charts, logic diagrams, and listings.
3. Documentation: Systems and user manuals sufficient to enable a person skilled in the applicable art to operate, maintain, and support the Software for its intended purposes.

GC-39-B The Contractor shall deliver to Metro the Software, Source Code Materials, and Documentation, in such tape, disk, or hardcopy format as Metro may designate.

GC-39-C The Contractor shall retain ownership of the Software, Source Code Materials, and Documentation with the right to exploit the same, subject to Metro's rights as herein provided. Metro shall place such copyright notices affirming the Contractor's ownership rights as the Contractor may reasonably require on all materials licensed hereunder which are reproduced by Metro.

GC-39-D The Contractor hereby grants to Metro a royalty-free, paid-up, non-exclusive license, in perpetuity, to use duplicate, and disclose the Software, Source Code Materials, and Documentation, and to make modifications of and enhancements to the Software, and permit others (who sign standard nondisclosure agreements) to do the same, but only for governmental purposes and not for any commercial purposes.

GC-39-E Metro shall hold the Software, Source Code Materials, and Documentation in confidence, shall use and disclose them only as expressly authorized herein or as required by law and only to its employees, agents or sublicensees to whom disclosure is necessary or appropriate for the performance and exercise of its rights hereunder, and shall take reasonable steps to ensure that unauthorized persons will have no access to them.

GC-39-F The Contractor warrants that the Software will perform according to the specifications set forth in the Contract, that it is owner of the Software, Source Code Materials, and Documentation that it has the right to convey and grant the license herein granted to Metro, and that Metro's use thereof as herein contemplated will not infringe any third party's proprietary rights in the United States. The foregoing warranties shall not apply to the extent the Software is modified by Metro.

GC-39-G Upon Metro's request the Contractor shall generate modifications of and enhancements to the Software not required by the Contract, at the Contractor's rates charged for comparable Work to its most favored customers.

GC-40 AGENT TO ACCEPT SERVICE

The Contractor shall maintain within Los Angeles County a duly authorized agent as identified in the Article entitled NOTICE AND SERVICE THEREOF of the Special Provisions to accept service of legal process on its behalf, and shall keep Metro advised of such authorized agent name and address during the duration of the Contract and for three (3) years after Final Payment, or as long as the Contractor has warranty obligations under the Article entitled WARRANTY

herein, whichever period terminates later. In the event that no such duly authorized agent is on file with Metro, the Contractor agrees that the Secretary of State of the State of California shall be the Contractor's authorized agent for service of legal process.

GC-41 CONFLICT OF INTEREST*

- GC-41-A** Contractor warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for Contractor, to solicit or secure the Contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach of this warranty, or violation of any other prohibition in this Article, Metro shall have the right to terminate the Contract for failure of Contractor to fulfill its Contract obligations.
- GC-41-B** Contractor agrees that, for the term of the Contract, no member, officer, or employee of Metro, or of a local public body during their employment and for one (1) year thereafter, shall have any interest, direct or indirect, in the Contract, or to any benefit arising thereof as prohibited by Government Code § 1090 and 87100.
- GC-41-C** The employment by Contractor of personnel on the payroll of Metro for the performance of Work under the Contract will not be permitted, even though such employment may be outside of the employee's regular working hours or on Saturdays, Sundays, holidays, or vacation time. The employment by the Contractor of personnel who have been on Metro payroll within one (1) year prior to the date of Contract award, where such employment is caused by and/or dependent upon Contractor securing the Contract or a related contract with Metro, is also prohibited.
- GC-41-D** Neither the Contractor nor its employees nor its subcontractors or their employees shall give or offer to give any campaign contribution to any member of Metro in violation of Government Code Section 84308.
- GC-41-E** The Contractor shall not be permitted to participate in any capacity in contracts, subcontracts or proposals (solicited or unsolicited) which may arise from its performance under the Contract and from any solicitations relating to the Project.

GC-42 COVENANT AGAINST CONTINGENT FEES*

- GC-42-A** The Contractor warrants that no person or Authorized Representative has been specifically employed or retained to solicit or obtain the Contract in exchange for a contingent fee, except a bona fide employee or Agent. A breach or violation of this warranty shall be considered a breach of Contract pursuant to the Article entitled TERMINATION FOR DEFAULT herein. In addition to any rights and remedies otherwise provided for in the Contract by law, Metro may deduct from the TCP or consideration, or otherwise recover, the full amount of the contingent fee.

GC-42-B "Bona fide Agent", as used in this Article, means an established commercial or selling entity that is maintained by the Contractor for the sole purpose of securing business and that neither exerts nor proposes to exert improper influence to solicit or obtain Metro contract(s) nor holds itself out as being able to obtain any Metro contract(s) through improper influence.

GC-42-C "Bona fide employee", as used in this Article, means a person who is employed by the Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance and who neither exerts nor proposes to exert improper influence to solicit or obtain Metro contract(s) nor holds itself out as being able to obtain any Metro contract(s) through improper influence.

GC-42-D "Contingent fee", as used in this Article, means any commission, percentage, or other sum that is payable only upon success in securing an Metro contract.

GC-42-E "Improper influence," as used in this Article, means any influence that induces or tends to induce an Metro employee, officer, Contractor, Subcontractor, Authorized Representative, or Consultant to give consideration or to act regarding an Metro Contract on any basis other than the merits of the matter.

GC-43 NO WAIVER

GC-43-A Failure of Metro to enforce at any time, or from time to time, any provision of the Contract shall not be construed as a waiver thereof.

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

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

GC-44 CONFIDENTIALITY*

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

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

GC-45 SAFETY AND LOSS PREVENTION *

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

A. Metro's Safety Principles

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

B. Contractor Responsibilities

The Contractor is responsible for:

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

C. Safety Practices

1. The Contractor shall inform its personnel of METRO safety practices and the requirements of Metro's safety program identified in [Metro Safety Manual For Other Than Major Construction](#).
2. If any of the Contractor's personnel are required to visit any Worksites, the Contractor shall furnish suitable safety equipment and enforce the use of such equipment by those personnel. The Contractor shall cooperate and coordinate with Metro and with other Metro Contractors on safety matters and shall promptly comply with any specific safety instructions or directions given to the Contractor by Metro.

GC-46 ENGLISH REQUIREMENTS *

At all times, all Contractor personnel on site must have sufficient knowledge of the English language to comprehend safety related directions and requirements.

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

End Of General Conditions (Services)

