

GENERAL PROVISIONS

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0100 TERMS AND DEFINITIONS

00101 GENERAL

Wherever in these General Provisions or in other Contract Documents the following terms or abbreviations are used, the meaning shall be as defined in this SECTION 00100, Terms and Definitions.

00102 ORGANIZATION STRUCTURE

The RTA is the Project owner and has ultimate Project decision-making authority.

The RTA is governed by a seven member Board consisting of four members from Orleans Parish and three members from Jefferson Parish. The Board's role is to set policy, oversee Project progress and approve Project actions including Project scope definition, funding, budget, contract award and amendment, and Project policies and procedures. In particular the Board approves policies to delegate management and financial authority down through the Project organization.

RTA has contracted with Veolia Transdev for a delegated management contract whose staff is responsible for providing the executive and administrative staff support to the Board for the Project. The RTA Rail Program Manager (RPM) Streetcar Projects works directly for the Chief Executive Officer/Vice President of Veolia Transdev.

00103 ORGANIZATIONAL DEFINITIONS

Rail Program Manager – Reports to the Vice President Veolia Transdev responsible for Design & Construction of the Rail Expansion.

Board – The word “Board” shall mean The Regional Transit Authority Board of Commissioners.

Vice President, Veolia Transdev – Vice President of VeoliaTransDev who reports directly to the RTA Board of Commissioners.

Authority – Indicates the Regional Transit Authority Board and all employees of Veolia Transdev and any and all Veolia Transdev subsidiaries.

00104 ABBREVIATIONS

LADOTD Louisiana Department of Transportation and Development

LDEQ Louisiana Department of Environmental Quality

CNO City of New Orleans

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DPW	Department of Public Works
NOBC	New Orleans Building Corporation
NOUPT	New Orleans Union Passenger Terminal
NTP	Notice to Proceed
P&P	City of New Orleans Department of Parks and Parkways

00105 DEFINITIONS

“AUTHORITY” The term “AUTHORITY” means the Regional Transit Authority, or its successors or assigns – acting by and through its authorized representative.

“Change Order” The term “Change Order” means a written document signed by the AUTHORITY, issued to the Contractor which alters the scope of the Work to be performed by the Contractor, changes the schedule for performance of the Work, increases or decreases the Contractor’s compensation, or makes any other change to the Contract.

“Change Request” The term “Change Request” means a document issued by the Contractor or AUTHORITY to the Resident Engineer requesting that a Change Order be issued.

“Contracting Officer” The term “Contracting Officer” means the Chief Executive Officer of Regional Transit Authority entering into this Contract for the performance of the Work required by the Contract.

“Contracting Officer’s Technical Representative” means the Program Manager, Rail Expansion of Regional Transit Authority or his duly appointed representative.

“Contractor” The term “Contractor” means the individual, firm, partnership, corporation, joint venture, or combination thereof who as an independent contractor has entered into this Contract with the AUTHORITY for the performance of the Work required by the Contract. This term includes all genders, however, for the purposes of this document “Contractor” is often referred to as if singular in number and masculine.

“Construction Schedule” The term “Construction Schedule” means the schedule prepared by the Contractor and accepted by AUTHORITY setting forth the logical sequence of activities required for the Contractor’s orderly performance and completion of the Work in accordance with this Contract and specifically to meet the specified milestone dates.

“Consultant” The term “Consultant” means the firm or firms under contract to AUTHORITY which are performing services, including but not limited to engineering, design, project control, construction management, surveying, geotechnical investigations,

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and environmental assessment in support of the overall Project of which this Contract is a part.

“Contract” The term “Contract” shall include the Contract Agreement, the Invitation for Bids with addenda, General Provisions, Special Provisions, Plans, Specifications, Contractor’s Bid including Executed Bid Forms and Attachments, and any Change Orders issued pursuant thereto.

“Contract Documents” The term “Contract Documents” means documents prepared for the Contract which include the Contract Agreement, the Invitation for Bids with addenda, General Provisions, Special Provisions, Plans, Specifications, Contractor’s Bid including Executed Bid Forms and Attachments, and any Change Orders issued pursuant thereto.

“Days” The term “Days” means calendar days which includes every day of the year.

“Engineer” The term “Engineer” refers to the Resident Engineer or his or her duly authorized representative.

“Final Acceptance” The term “Final Acceptance” means written notice by AUTHORITY acknowledging that Contractor has fulfilled all of its obligations under the Contract and that AUTHORITY has accepted the Work as of the date stated in the written notice. Final Acceptance is a condition precedent to Final Payment and defines commencement of the warranty period.

“Final Completion” The term “Final Completion” means fulfillment of all the Contractor’s obligations under the Contract.

“Invitation for Bids” The term “Invitation for Bids” refers to the bid solicitation letter and all attachments thereto.

“Legal Holidays” The term “Legal Holidays” means the following 7 days on the calendar, New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Mardi Gras.

“Materials” The term “Materials” includes materials, equipment, products, and articles incorporated or to be incorporated into the Work.

“Plans” The term “Plans” includes the drawings, standard drawings, profiles, typical cross-sections, general cross-sections, elevations, diagrams, schedules, and details which show the locations, character, dimensions, and details of the Work.

“Product Data” The term “Product Data” includes written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, or other information furnished by the Contractor to describe Materials to be used for some portion of the Work.

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“Project” The term “Project” means New Orleans Regional Transit Authority’s Canal Street to Union Passenger Terminal Rail Expansion Project overall objective or endeavor of which this Contract forms a part.

“Project Closeout” The term “Project Closeout” means the process by which the Contractor documents fulfillment of all obligations under the Contract. This process follows Substantial Completion and precedes Final Acceptance.

“Project Manager” The term “Project Manager” means the Contractor’s executive representative designated in accordance with Article 00505, Superintendence.

“Punch List” The term “Punch List” means a list or lists of items to be furnished and or work to be performed by the Contractor to finally complete the Work.

“Resident Engineer” The term “Resident Engineer” means AUTHORITY’s authorized representative charged with the professional administration of this construction Contract.

“Samples” The term “Samples” includes physical examples of Materials to be supplied or workmanship, which shall, when approved by AUTHORITY, establish standards by which the Work shall be judged.

“Shop Drawings” The term “Shop Drawings” means drawings, diagrams, schedules, or other data prepared by Contractor or any Subcontractor, manufacturer, Supplier, or distributor to illustrate or detail some portion of the Work.

“Specifications” The term “Specifications” means that part of the Contract containing written directions and requirements for completing the Work. Standards, or portions thereof, cited in the Specifications by reference shall have the same effect as if physically included in the Contract in their entirety.

“Subcontract” The term “Subcontract” means any agreement including purchase orders (other than one involving an employer/employee relationship) entered into between the Contractor and a Subcontractor calling for services, labor, equipment, and/or materials required for the Contract performance, including any modification thereto.

“Subcontractor” The term “Subcontractor” means any individual, firm, partnership, corporation, joint venture, or combination thereof, or other entity, other than employees of the Contractor, who contract with the Contractor or Subcontractor of any tier to furnish services, labor, equipment and/or materials, or labor and materials, under this Contract. As used herein, the terms Subcontractor and Supplier are synonymous.

“Substantial Completion” The term “Substantial Completion” means completion of the Work, or a designated portion thereof, to a point where the AUTHORITY certifies that the Work or the designated portions can be used for the purpose for which it was intended.

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“Supplier” The term “Supplier” means any person, firm, partnership, corporation or other entity that provides Materials, including those fabricated to a special design, but usually provides no labor at the Work Site other than delivery.

“Work” The term “Work” means the furnishing of all of the supervision, labor, Materials, equipment, services, and incidentals necessary to complete any individual item and the entire Contract and the carrying out of any duties and obligations imposed on the Contractor by the Contract.

“Work Site” The term “Work Site” means the area enclosed by the Limit of Work indicated on the Plans and the boundaries of local streets and public easements in which the Contractor is to perform under the Contract.

“Working Drawings” The term “Working Drawings” means the drawings prepared by the Contractor which depict the sequence, methods, Materials, details of construction or procedures for accomplishing a portion of the Work, including, but not necessarily limited to, falsework, shoring, concrete formwork and excavation plans.

END OF SECTION 00100 – TERMS AND DEFINITIONS

00200 PERFORMANCE BOND

1. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment is made by Owner.

End of Section 00200

00400 SCOPE OF WORK

00401 GENERAL

A. Contractor shall perform the Work described by the Plans and Specifications in strict accordance with the Contract. Contractor shall provide and pay for all supervision, labor, Materials, tools, equipment and machinery, water, electricity, fuel, heat, utilities, transportation, and other facilities and services, except for those specifically identified in the Contract as provided by AUTHORITY, necessary for the proper execution and completion of the Work by its own means and methods. Contractor shall supervise and perform the Work using its best skill and ability.

B. If any references have been made in the Specifications to responsibilities by crafts and specialty or trade contractors, these references were made for the convenience of preparing the Specifications and are not intended to limit any responsibility of the Contractor to provide a complete installation under this Contract. Whenever such references are made to any trade designation, Subcontractor, or specialty contractor, it shall be deemed to mean the Contractor responsible to AUTHORITY for the Work under this Contract.

00402 INTENT OF CONTRACT

A. The General Provisions, Special Provisions, Plans, Specifications, and Contract attachments and exhibits are essential to this Contract. All are intended to be complementary and to provide for a complete project suitable for its intended use. A requirement occurring in one is as binding as though occurring in all. Where Plans and Specifications describe portions of the Work in general terms, but details are incomplete or silent, it is understood that only the best general practice is to prevail and that only new materials and first-quality workmanship are to be used. Omissions of details of Work that are manifestly necessary to carry out the intent of the Contract, or that are customarily performed, shall not relieve the Contractor from the obligation to perform such Work. Notes on Plans are part of the Plans. No reliance shall be placed on dimensions scaled from any Plans.

B. The documents referenced below are in descending order of precedence. Any conflict between any of the documents shall be resolved in favor of the document with higher precedence.

- Change Orders
- Contract Agreement with Attachment(s) Forms
- Contractor's Bid including Executed Bid Forms and Attachments
- Special Provisions

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- General Provisions
- Specifications
- Plans
- Reference Documents/Standards/Codes

C. The Contractor shall notify AUTHORITY immediately of any ambiguity or conflict within or between documents, any error, omission, lack of necessary detailed description, or a detail which is a potential code violation which is discovered in the Specifications or Plans and request clarification and direction. AUTHORITY will provide clarification and direction as required to fulfill the intent of the Specifications or Plans. AUTHORITY will issue a Change Order, in accordance with Article 00406, Changes, if necessary.

D. Proceeding without the required notification and request for clarification or instruction shall be at the Contractor's risk and any work performed may be determined to be non-conforming.

00403 CONTRACTOR'S STATUS

Contractor is an independent contractor for all purposes, is neither an agent nor employee of AUTHORITY and is entitled to no compensation from AUTHORITY other than that provided by this Contract.

00404 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

A. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to:

- (1) conditions bearing upon transportation, disposal, handling, and storage of material;
- (2) the availability of labor, water, electric power and roads;
- (3) uncertainties of weather, river stages, or similar physical conditions at the Work Site;
- (4) the conformation and conditions of the ground; and
- (5) the character of equipment and facilities needed preliminary to and during work performance.

The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Work Site, including all exploratory work done by AUTHORITY, as well as from the drawings and Specifications made a part of this Contract and referenced materials

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made available by AUTHORITY. The Contractor shall be responsible for reviewing any and all as-built or as-installed information from agencies and utilities, public and private, available to the public upon request prior to submitting his Bid for the Work. Any failure of the Contractor to take the actions described and acknowledged in this Article will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to AUTHORITY.

B. AUTHORITY assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by AUTHORITY. Nor does AUTHORITY assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

00405 DIFFERING SITE CONDITIONS

A. Contractor shall promptly, and before the conditions are disturbed, give a written notice to AUTHORITY of (1) subsurface or latent physical conditions at the Work Site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided in the Contract.

B. AUTHORITY shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for performing any part of the Work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made under this Article and the Contract modified in writing accordingly.

C. No request by the Contractor for an equitable adjustment to the Contract under this Article shall be allowed unless the Contractor has given the written notice required.

D. No request by Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

00406 CHANGES IN THE WORK

A. AUTHORITY may, at any time, without notice to the sureties, make changes in the Work within the general scope of the Contract, including but not limited to changes:

- (1) In the Plans and Specifications;
- (2) In the method or manner of performance of the Work;
- (3) In the AUTHORITY furnished facilities, equipment, Materials, services, or Work Site; or
- (4) In the performance period for the Work.

B. The Contractor shall promptly notify AUTHORITY in writing when the Contractor has received direction, instruction, interpretation or determination from any source which the Contractor believes may cause any change in cost or time required for the performance of the Work.

Such written notification shall state

- (1) the date, circumstances, and source of the order and
- (2) the reasons why the Contractor regards the order or action as a change.

Such notice of Change shall be given to AUTHORITY before the Contractor acts on said direction, instruction, interpretation or determination and the AUTHORITY shall make written reply within fourteen (14) Days after its receipt.

The Contractor may request additional time or additional compensation or both for Work through a Change Request. For any Change Request which has merit, AUTHORITY will initiate a change to the Contract as provided in this Article. If the request for change is denied and the Contractor believes the request has merit, the Contractor may proceed in accordance with the provisions of Article 00513, Claims.

C. If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any of the Work under this Contract, AUTHORITY shall make an equitable adjustment and modify the Contract by a written Change Order or by an adjustment of the quantities as described in Article 00408, Minor Adjustment in the Plans and Quantities.

D. For any change requested by AUTHORITY or the Contractor, the Contractor shall submit, within fourteen (14) Days of the request, a detailed price and schedule proposal supported with documentation that reflects all costs and time-related impacts to the Contract. Any requests for an extension of time by the Contractor must be accompanied by a

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detailed schedule analysis documenting the delay and its impact on the project Schedule by virtue of CPM schedule logic. Any possible delay that could result from a change in the Work shall first be mitigated, in whole or in part to the extent practicable, by the Contractor by revising the project Schedule and/or changes to the intended sequence of, or approach to, the performance of the Work. Such schedule adjustments are considered to be part and parcel to the nature of change mitigation and shall not be considered for additional compensation. If Contractor is denied an extension of time, a mitigation schedule shall be submitted to show schedule recovery.

The proposal shall be prepared in accordance with the provisions of Articles 00909, Payment for Changes and 00910, Cost Reimbursable (Force Account) Work. The proposal shall include a complete breakdown of direct costs of both deletions and additions directly attributable to the proposed change in the Work, itemizing labor, materials, equipment, and any other eligible direct costs. Overhead and profit percentage markups shall not exceed those specified in General Provisions Article 00910, Cost Reimbursable (Time and Materials) Work.

Comment [NW1]: Time and Materials is a better description, since Force Account is often interpreted as work performed by the Authority's forces.

E. For all changes under this Article, the AUTHORITY and the Contractor shall negotiate a settlement of the time and cost related impacts of the change. A negotiated Change Order shall set out prices, scheduling requirements, time extensions and all costs of any nature arising out of the change. The execution of a Change Order by both parties will be deemed as accord and satisfaction of all claims of any nature arising from or relating to the change.

In the event that the Contractor and AUTHORITY are unable to agree on the amount of any adjustment to be made to the contract price or time, AUTHORITY may order the Contractor to proceed with the performance of the Work in question. Such Work will, at AUTHORITY's option be paid for:

- (1) as cost reimbursable work in accordance with Article 00910, Cost Reimbursable (Time and materials) Work; or
- (2) pursuant to a unilateral Change Order issued by AUTHORITY.

The Contractor when so ordered shall proceed with the Work as changed.

F. Contractor shall proceed with any Work ordered under this Article in a timely manner so as to avoid delay and minimize any increase in time required for performance of the Work but, in no event, shall Contractor proceed with such Work without a fully executed Change Order or written order from AUTHORITY to so proceed. An inadvertent payment made by AUTHORITY for work not specifically authorized in writing by

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AUTHORITY shall not be evidence or acknowledgement of AUTHORITY's liability.

G. When Contractor performs work which the Contractor contends is additional or changed Work under this Article before agreement to a Contract adjustment is reached, Contractor shall keep daily records of the costs incurred in connection with such Work in accordance with the requirements of Article 00910, Cost Reimbursable (Time and Materials) Work and submit daily Time and Material work sheets to AUTHORITY in accordance with Article 00910. In order to be considered as valid, daily Time and Material work sheets shall clearly identify the work being progressed and shall be signed and dated by the Resident Engineer, or his appointee, on that date.

AUTHORITY's action in approving timesheets submitted by the Contractor shall not be construed as acceptance of the Contractor's position regarding the need for or magnitude of an equitable adjustment for such work.

H. Except as provided in this Article, no order, statement, or conduct of AUTHORITY shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment.

00407 EMERGENCY WORK

In the event of an emergency which endangers life or property, Contractor shall take such immediate actions as may be reasonably necessary to safeguard life and property. Contractor shall notify AUTHORITY as soon as possible of the circumstances of the emergency and the actions taken. Contractor shall perform such additional work as may be directed by AUTHORITY either orally or in writing. Such oral orders will be confirmed in writing as soon as practicable. If the Contractor performs emergency work, the Contractor shall keep accurate records of actual costs in accordance with Article 00910, Cost Reimbursable (Time and Materials) Work until such time as agreement on compensation is reached. Such records shall be subject to verification and audit by AUTHORITY.

Keeping and verification of such records shall not be construed as an indication that all work performed was required or that this method of compensation is necessarily acceptable for such emergency work and shall not preclude the possibility of an agreement to pay for such emergency work on another basis. When agreement is reached regarding compensation for the performance of emergency work, the Contract will be amended by issuance of a Change Order reflecting such agreement.

00408 MINOR ADJUSTMENTS IN THE PLANS AND QUANTITIES

A. AUTHORITY reserves the right to make minor adjustments in construction details shown on the Plans or required by the Specifications without the issuance of a formal Change Order when:

- (1) The character of the Work performed is the same or substantially the same as other Work required under the Contract;
- (2) There is an applicable pay item either in the original Bid Schedule, or a previously negotiated Change Order;
- (3) There is no difference in the quantity of Work required; or, unless specifically exempted in the Specifications, the difference in the quantity of Work required does not exceed plus or minus twenty (20) percent of the original Contract quantity and the total of all adjustments to the pay item does not exceed plus or minus twenty (20) percent of the original Contract quantity or 5% of the total price, whichever is less; and
- (4) The adjustment does not affect the character or quantity of other Work, the time for completion of the Contract, or the geographic Work Site limits.

B. Compensation for minor adjustments in the Plans or Specifications made in accordance with this Article will be made by adjusting the pay quantity of the appropriate pay item or previously priced item for the actual increase or decrease in quantity attributable to the minor adjustment.

C. A minor adjustment as described in this Article will be directed in writing by AUTHORITY and will provide an estimate of the magnitude of the adjustment and the proposed method of compensation. If the Contractor disagrees with the direction or the method of compensation, the Contractor shall notify AUTHORITY in accordance with Article 00406, Changes in the Work.

00409 VALUE ENGINEERING CHANGE PROPOSALS

A. AUTHORITY encourages the Contractor to submit Value Engineering Change Proposals (VECPS) in order to avail AUTHORITY of potential cost savings. Contractor and AUTHORITY will share any savings in accordance with this Article. Contractor is encouraged to submit VECPS whenever it identifies potential savings or improvements.

B. This Article applies to a Contractor developed and documented VECP which:

- (1) Requires a change to this Contract to implement the VECP; and
- (2) Reduces the Contract amount without impairing essential functions or characteristics of the Work, provided that it is not based solely upon a change in specified quantities.

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C. Contractor shall submit VECPs directly to AUTHORITY. As a minimum, the following information shall be submitted by Contractor with each VECP:

- (1) Description of the existing Contract requirements which are involved in the proposed change;
- (2) Description of the proposed change;
- (3) Discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item;
- (4) Itemization of the Contract requirements which must be changed if the VECP is accepted (e.g., drawing numbers and Specifications);
- (5) Justification for changes in function or characteristics of each affected item, and effect of the change on the performance of the end item;
- (6) Effect of proposed change on life-cycle costs, including operation, maintenance, replacement costs, and life expectancy;
- (7) Date or time by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any affect on contract completion time or delivery schedule; and
- (8) Cost estimate for existing Contract requirements correlated to Contractor's unit price or lump sum breakdown and the proposed changes in those requirements. Costs of development and implementation by Contractor shall be provided. Additional costs to AUTHORITY (e.g., costs of testing, redesign, and effect on other contracts) shall also be estimated.

D. AUTHORITY retains the right to reject a VECP without review, without recourse by the Contractor, if a similar change is already under review, or if, in AUTHORITY's sole opinion, the potential savings are unlikely to justify the cost of the review, or if the proposed change is otherwise unacceptable to AUTHORITY. The onus for establishing the technical competency and/or equivalency of any VECP is on the Contractor.

E. AUTHORITY will expeditiously process proposals accepted for review but shall not be liable for any delay in acting upon any proposal submitted pursuant to this Article. AUTHORITY may accept, in whole or in part, by Change Order, any VECP submitted pursuant to this Article. Until an order to proceed is issued on a VECP, Contractor shall remain obligated to perform in accordance with this Contract. Change Orders made pursuant to this Article will so state. AUTHORITY's decision as to acceptance or rejection of any VECP shall be at

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AUTHORITY's sole discretion and shall be final and not subject to review by disputes process or otherwise.

F. If a VECP submitted by Contractor pursuant to this Article is accepted, the Contract price shall be adjusted in accordance with the following provisions:

(1) Definitions:

(a) Estimated gross savings to Contractor (GS) means the difference between the cost of performing the work according to the existing requirement and the cost to perform it according to the proposed change. In each instance, Contractor's profit shall not be considered part of the cost.

(b) Contractor cost (CC) means reasonable costs incurred by Contractor in preparing the VECP and making the change, such as cancellation or restocking charges.

(c) Estimated net savings to Contractor (NS) means gross savings (GS) less Contractor costs (CC).

(d) AUTHORITY's Costs (TMC) means reasonable costs incurred by AUTHORITY in evaluating and implementing the VECP, such as testing, redesign, and effect on other contracts.

(2) Calculations: The Contract amount shall be reduced by an amount equal to fifty percent (50%) of (NS) plus fifty percent (50%) of (TMC), expressed by the formula: $\text{Reduction} = 0.5 (\text{NS}) + 0.5 (\text{TMC})$

(3) Contractor's profit shall not be reduced by application of the VECP.

G. Contractor shall include appropriate value engineering incentive provisions in all Subcontracts of \$25,000.00 or greater, and may include those provisions in any Subcontract. In determining net savings for cost reduction proposals which involve a Subcontractor, only actual costs to the Contractor and Subcontractor as defined in Paragraph "F" will be allowed as a Contractor Cost. Incentive payments made to the Subcontractor by the Contractor in connection with the cost reduction proposal will not be allowed in determining net saving.

H. Contractor may restrict AUTHORITY's right to use any sheet of a VECP or of the supporting data submitted pursuant to this paragraph in accordance with the terms of the following legend, if the legend is marked on the sheet: "Data furnished pursuant to the "Value Engineering Change Proposals" Article of the Contract shall not be disclosed to any outside person or AUTHORITY, or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under said clause."

This restriction does not limit AUTHORITY's right to use information contained in this VECP if it is, or has been, obtained, or is otherwise available, from Contractor or from another source without limitations. If a VECP is accepted by AUTHORITY after the use of the data in an evaluation, AUTHORITY may

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duplicate, use, and disclose any data reasonably necessary to the full utilization of the VECP, as accepted in any current or future contract, in any manner and for any purpose whatsoever, and may allow others to do.

AUTHORITY shall have an absolute and unrestricted right to use the VECP for any purpose, including other than on the Contract or contracts for which it was submitted.

I. The compensation provisions of this Article constitute Contractor's exclusive and complete compensation for AUTHORITY's use of the VECP and Contractor shall have no right to additional compensation for future or additional uses of the VECP.

00410 FINAL CLEANUP

A. Prior to final acceptance, all areas occupied or disturbed by the Contractor in connection with the Work shall be cleaned of all rubbish, materials, products designated in the Contract as becoming or remaining the property of the Contractor, equipment and temporary structures. The ground shall be returned to original contours and restored to as near preconstruction condition as possible unless alternate restoration plans are approved in writing by AUTHORITY or required by the Contract.

B. Any private property occupied or disturbed by the Contractor in connection with the Work shall be restored to the satisfaction of the owner or jurisdictional authority. Prior to final acceptance, the Contractor shall present AUTHORITY with a release, signed by the owner of the property or jurisdictional authority, attesting to the acceptability of the restoration work and waiving any and all claims against AUTHORITY.

C. The restoration of all property, including sites used for disposal of material removed from the project or as a source of material incorporated in the Work, shall be such that the condition of the sites, including all materials and structures which remain following final completion of the Work present no hazard to the public and fully comply with all applicable laws and regulations including, but not limited to local zoning and land use requirements.

00411 WARRANTY OF WORK

A. Contractor warrants that all Work performed pursuant to the Contract shall be of the quality specified or of the best grade if no quality is specified, and shall conform to the Plans, Specifications, Samples, and other descriptions set forth in the Contract. Unless otherwise provided in this Contract, Contractor warrants all Materials furnished by Contractor and all Work performed by Contractor to be free of defects and faults for a period of two (2) years from the date of Final Acceptance of the Work by AUTHORITY unless specifically

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noted otherwise in the Contract Documents, or if the material manufacturer routinely offers material a warranty of a longer duration. The Contractor's warranty shall apply regardless of any lesser period of warranty provided by the manufacturer of Materials furnished by Contractor.

- B. Upon receipt of written notice from AUTHORITY of a breach of warranty during the applicable period, Contractor shall redesign, repair or replace in a manner satisfactory to AUTHORITY the defect or malfunction, and shall perform such tests as AUTHORITY may require to verify that such redesign, repair or replacement complies with the requirements of the Contract. Contractor warrants the redesigned, repaired or replaced work for the remainder of the original warranty period. If less than ninety (90) Days remain on the original warranty, it shall be extended for a minimum of ninety (90) Days after acceptance of the redesign, repairs, or replacement. All costs incidental to redesign, repair or replacement, and testing, including the removal, re-placement, and reinstallation of equipment necessary to gain access and all other costs incurred as a result of a breach of warranty shall be borne by Contractor and Contractor's surety.
- C. If Contractor, within ten (10) Days after receiving AUTHORITY's written notice of a breach of warranty, fails to proceed to comply with the terms of this Article AUTHORITY may have the defects corrected, and Contractor shall be liable for all costs incurred, provided that in case of emergency where, in the opinion of AUTHORITY delay would cause serious loss or damage, repairs may be made without notice to Contractor, and Contractor shall pay the cost of the repairs.
- D. During the warranty period, Contractor shall be liable for all damage or disturbance to property and other improvements under, above, within, or adjacent to the Work, caused in whole or in part by activities of Contractor in performing its duties and obligations under this Contract.
- E. Contractor shall register all manufacturer and Supplier warranties in AUTHORITY's name
- F. Any warranty from a Subcontractor, manufacturer or Supplier to the Contractor exceeding any period required by the Contract shall be extended to AUTHORITY for the same period of time as given to the Contractor
- G. The above warranties are not intended as a limitation but are in addition to all other express warranties set forth in the Contract and such other warranties either express or implied by law, custom or usage of trade.

00412 TEMPORARY CONSTRUCTION FACILITIES AND UTILITIES

A. Temporary facilities and utilities shall be installed in compliance with federal, state, and local codes and statutes, at Contractor's expense. The installation and maintenance of all temporary facilities will be subject to the approval of AUTHORITY, and unless otherwise authorized in writing by AUTHORITY, all such facilities shall be removed before final completion of the Work.

B. Before proceeding with the erection of any construction facilities, including temporary structures, machinery, offices, and warehouses, Contractor shall, at its expense, notify and furnish AUTHORITY with such information and drawings as AUTHORITY may request showing locations of such facilities, capacities and capabilities of the machinery and equipment, and projected utility requirements. Such construction facilities shall be fully adequate for the uses intended and fully comply with the requirements of the Contract.

00413 VARIATION IN ESTIMATED QUANTITY

A. Unless specifically exempted in the Specifications, if the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit priced item varies more than twenty percent (20%) above or below the estimated quantity, an equitable adjustment in the Contract price shall be made upon request of either party in accordance with Article 00406 CHANGES IN THE WORK.

The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty percent (120%) or below eighty percent (80%) of the estimated quantity.

B. For an actual quantity exceeding 120% of the estimated quantity, the unit price shall be adjusted only for the quantity in excess of 120% of the estimated quantity.

C. For an actual quantity less than 80% of the estimated quantity, the unit price shall be adjusted for the total actual quantity of work performed.

D. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time. The request must be received by AUTHORITY within ten (10) Days from the date AUTHORITY notifies the Contractor of the quantity variation, or the date the Contractor was aware of the quantity variation, whichever is earlier, or within such further period as may be granted by AUTHORITY before the date of final payment. Upon receipt of a written request for an extension, AUTHORITY shall ascertain the facts and make an adjustment extending the completion date if such extension is justified in AUTHORITY's judgment.

00414 PARTNERING

A. The AUTHORITY strongly supports the concept of a partnering process as generally practiced by The Associated General Contractors of America (AGC). This process attempts to establish working relationships among the parties through a voluntary, mutually developed, formal strategy of commitment and communication. This process attempts to create an environment where trust and teamwork prevent disputes, foster a cooperative bond to everyone's benefit, and facilitate the completion of a successful project. Partnering will be structured to draw on strengths of each organization to identify and achieve reciprocal goals. The objectives are effective and efficient Contract performance so that the Work can be completed on schedule, within budget and in compliance with the Contract.

B. Parties to the partnering process may include the AUTHORITY's Design & Construction, Program Control & Administration, Operations, and Maintenance Departments; the Contractor and subcontractors, LADOTD, applicable City organizations, and various utility companies. The AUTHORITY and the Contractor will make arrangements to determine attendees and the agenda for the meetings, and at which time a Crisis Communications Plan will be developed.

C. The partnering process contemplates an initial meeting between the parties that will facilitate the partnering relationship throughout the Contract term. If warranted and agreed to by the parties, subsequent follow-up partnering meetings may be held during the Contract term. The initial meeting should be held within thirty (30) calendar days after Notice to Proceed, will take place within the AUTHORITY service area, and will not be more than two (2) consecutive days in length.

Prior to the meeting the AUTHORITY and the Contractor will agree on the partnering facilitator (consultant), the location, refreshments (excluding alcoholic beverages), and meals. Any cost associated with the partnering process shall be agreed to and shared equally by the AUTHORITY and the Contractor.

D. The Contractor shall pay the invoices for the actual cost incurred for the partnering meetings held in accordance with the agreement delineated in subparagraph C. above.

Backup documents for the actual cost shall be submitted to the AUTHORITY for reimbursement after the meeting. The AUTHORITY will reimburse the Contractor for one half the actual costs. Reimbursement for the Contractor shall neither be subject to retention as provided in Article 00902, Retainage nor include markup of any kind. An allowance item in the Bid Schedule is provided for this payment. Any partnering meetings held subsequent to the initial meeting shall be subject to the same terms and conditions as established in this sub-paragraph.

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E. Any costs incurred by the Contractor that are not agreed to and paid under subparagraph C. and D. above, shall be paid by the Contractor at no change in the Contract price. F. The establishment of a partnering charter on a project shall not change the legal relationship of the parties to the Contract nor shall relieve either party from any of the terms of the Contract.

END OF SECTION 00400 - SCOPE OF WORK

00500 CONTROL OF THE WORK

00501 RESIDENT ENGINEER

AUTHORITY shall appoint a Resident Engineer for this Contract. The Resident Engineer and his or her representatives shall at all times have access to the Work wherever it is in preparation or progress. The Resident Engineer shall be the formal contact between AUTHORITY and Contractor and shall handle, on behalf of AUTHORITY, all matters except those otherwise provided for in the Contract.

A. The Resident Engineer's authority shall include authority to approve or reject submittals, to stop any Work whenever deemed necessary, to order changes, to reject Work, to receive all notices under the Contract, to establish progress and final Contract pay amounts, and to take other appropriate action as necessary in accordance with the Contract. The Resident Engineer's decision regarding the acceptability of workmanship and Materials and the percentage or units of Work performed for progress payment purposes will be final.

B. Contractor shall carry out the instructions of the Resident Engineer concerning the Work to be done under the Contract.

C. The Resident Engineer's approval will not relieve the Contractor of its obligation to fully comply with the requirements of the Contract.

00502 INSPECTORS

A. AUTHORITY may utilize one or more inspectors who shall be representatives of the Resident Engineer and who shall have access to the Work at all times wherever it is in preparation or progress.

B. Inspectors are utilized solely for AUTHORITY's benefit, and are not intended as a source of advice for Contractor's employees or subcontractors.

C. The inspector has the authority to reject defective work or work not in conformance with Contract requirements.

D. The inspector may verify quantities and labor and equipment time for Time and Materials or disputed work. Such verification shall not be construed as AUTHORITY's acceptance of responsibility for any or all costs or schedule impacts of such work.

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E. The inspector does not have authority to authorize any changes in the Work, to waive provisions of the Contract, to direct the Contractor's operations, to accept work on behalf of AUTHORITY, or to order extra work.

00503 INSPECTION, SAMPLING AND TESTING

A. AUTHORITY may inspect and test all or any part of the Work at any reasonable time. Inspection and testing by AUTHORITY does not relieve the Contractor of responsibility for the quality and conformance of the Work with Contract requirements.

B. The Contractor shall furnish AUTHORITY with adequate facilities required for safe access to the Work for inspection and sampling and shall provide assistance in obtaining samples. The Contractor shall advise AUTHORITY of the name and location of, and ensure that manufacturers, producers and fabricators of Materials for this Contract provide access to their plants or facilities and provide proper facilities for sampling, inspection, and testing.

C. The Contractor shall give AUTHORITY sufficient notice of the location and availability of elements of the Work to allow for inspection, sampling and testing prior to incorporation of Materials or covering of the Work.

D. AUTHORITY may at any time prior to Final Acceptance require the Contractor to uncover portions of the Work for inspection and testing. Contractor shall restore these portions of Work to the standard required by the Contract. If the Work uncovered does not comply with the Contract, was done without required documentation, or if AUTHORITY was given insufficient notice to allow adequate time for inspection, sampling or testing, the uncovering and restoration shall be done at the Contractor's expense.

If the Work uncovered meets Contract requirements and was done with sufficient notice to AUTHORITY, the costs of uncovering and restoration shall be paid by AUTHORITY in accordance with Article 00910, Cost Reimbursable (Time and Materials) Work and Article 00406, Changes in the Work.

E. When the United States government participates in the cost of the Work covered by this Contract, or if AUTHORITY has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or may affect third party facilities, or if the Work is by law subject to inspection by any public body or official, properly authorized representatives of these organizations have the right to inspect the work affecting their interest or property. Their right to inspect shall not make them a party to this Contract and shall not interfere with the rights of the parties to this Contract. Instructions or orders of such parties shall be transmitted to or through the Resident Engineer.

00504 QUALITY CONTROL AND COMPLIANCE WITH CONTRACT REQUIREMENTS

A. Materials furnished and Work performed by the Contractor shall conform to details shown on the Plans, and requirements given in the Specifications. The Contractor is responsible for confirming that materials furnished and work performed comply in all respects with the Contract through inspection and testing, as specified within the Contract Documents. The quality requirements contained in the Contract Documents are considered to be the minimum acceptable standard and costs for exceeding those minimum standards will not be considered as cause for additional time or compensation.

B. The AUTHORITY will perform check testing and periodic inspections to verify adequacy of Contractor's quality control or for any other purpose and will bear the cost of such testing and inspection. AUTHORITY reserves the right to reject Materials on the basis of AUTHORITY instituted inspection and testing.

C. Materials furnished or work performed which does not comply with Contract requirements will be considered non-conforming. Non-conforming work includes, but is not limited to:

- (1) Work done or products incorporated beyond lines shown on the Plans or established by AUTHORITY.
- (2) Work done or products incorporated contrary to AUTHORITY's instructions.
- (3) Work changed or added without AUTHORITY's written authorization,
- (4) Work which includes incorporation of unapproved substitutions or unapproved Materials supplied under the "or equal" provisions of Article 00604, Material Options.
- (5) Work performed or Materials furnished without the required testing, inspection or other conformance documentation or without required warranties.

D. Work or Materials not in conformance with the Contract requirements. When non-conforming work is discovered, AUTHORITY may:

- (1) Reject the Materials or workmanship or require its correction. Contractor shall satisfactorily correct rejected workmanship or satisfactorily replace rejected Materials at Contractor's own expense and promptly segregate and remove rejected Materials from the Work Site and properly dispose of them. If Contractor fails to promptly replace rejected Materials or correct rejected workmanship, AUTHORITY may, by contract or otherwise, remove and replace such rejected Materials or

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workmanship, correct such Materials or workmanship, and dispose of all rejected Materials and workmanship so removed, charging the costs thereof to the Contractor, or AUTHORITY may terminate the Contractor's right to proceed in accordance with Article 00815, Termination for Default and Contractor and its sureties shall be liable for any costs and damages occasioned thereby.

(2) Accept the Materials or workmanship as suitable for the intended purpose, document the basis of such acceptance, and deduct an equitable amount from the Contract price for uncorrected work.

00505 SUPERINTENDENCE

A. The Contractor shall give its personal attention to the Work and have competent foremen or superintendents present on the Work at all times during its progress.

B. Contractor shall appoint one competent on-site Project Manager who shall have full authority to act on behalf of Contractor and any or all subcontractors in all matters within the scope of the Contract including execution of Change Orders. The Project Manager or a designated assistant, competent to direct the Work and authorized to act on behalf of Contractor, shall be present on the job site at all times when work is being performed by the Contractor or a Subcontractor of any tier.

The Contractor shall furnish AUTHORITY with a written confirmation of the Project Manager's authority to act for Contractor.

C. Immediately following award of the Contract, Contractor shall submit to AUTHORITY the resume of its candidate for the position of Project Manager. If for any reason, and at any time, the candidate submitted by Contractor is not acceptable to AUTHORITY, or becomes unacceptable, Contractor shall propose additional candidates. If Contractor wishes to replace its Project Manager at any time during the performance of this Contract, it first shall submit the resume of its new candidate to AUTHORITY for AUTHORITY's acceptance and shall not make the substitution without AUTHORITY's acceptance.

D. The Contractor shall establish and maintain a Project office within the New Orleans Metropolitan Area and in close proximity to the Work Site. The office shall be maintained from the time the Notice to Proceed is issued until such time as all Contract Work has been finally completed. The Contractor shall promptly notify AUTHORITY of the location and mailing address of its project office.

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00506 CONTRACTOR'S EQUIPMENT

Contractor shall furnish equipment which shall be of adequate number, size and condition to produce a satisfactory quality of work. All equipment used by Contractor shall meet all applicable safety, noise, and emission requirements as well as other requirements of the Work. Equipment which, in AUTHORITY's opinion, fails to meet requirements of the Contract or produce a satisfactory product or result shall, upon written order, be removed immediately and not used again on the project without prior written approval.

00507 COOPERATION BY THE CONTRACTOR

A. The Contractor shall cooperate with AUTHORITY in the conduct of Contractor's operations under this Contract. The Contractor shall assist AUTHORITY as required by this Contract. The Contractor shall:

- (1) Keep at the Work Site one complete current set of Contract documents, Plans, Specifications, working drawings, manufacturer's data and instructions, test results, and other applicable documents. Such documents shall be available to AUTHORITY personnel at all times.
- (2) Furnish AUTHORITY every reasonable facility necessary to obtain information regarding the nature, quantity, and quality of any part of the Work.
- (3) Provide AUTHORITY with timely notification of planned work activities, including changes in established schedules.
- (4) Provide information and assistance to AUTHORITY's Public Relations staff in keeping the public informed and mitigating adverse impacts on the public associated with construction activities
- (5) Cooperate with AUTHORITY and residents and businesses within the vicinity of the Work Site to minimize inconveniences caused by the construction or the Contract.
- (6) Participate in regular project meetings chaired by AUTHORITY.

B. AUTHORITY may award other contracts in conjunction with this Project. Other agencies may also be performing work, including utility relocation activities, by contract or otherwise, in support of this Project. These activities may be underway in the Work Site during the term of this Contract.

The AUTHORITY reserves the right to perform work related to the Project with the AUTHORITY's own forces and to award separate contracts in connection

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with other portions of the Project or other work on the site under these or similar conditions of the Contract.

Contractor shall cooperate with AUTHORITY, other agencies, and other contractors in scheduling, coordinating, and fitting Contractor's Work with the work of others to minimize conflicts. Contractor shall not commit or permit any act which will interfere with the performance of work by any other AUTHORITY, contractor, or AUTHORITY.

C. Facilities and installations of various utilities may be present in the Work Site. Contractor shall cooperate with owners of utilities to protect any above ground and below ground utility property. Contractor shall contact the utility owners and arrange operations and schedules to minimize any interruption of utility services. Contractor shall provide utility owners with sufficient notice to allow adequate time for location of utility services, scheduling of outages, or other utility activities needed to accommodate Contractor's operations.

Contractor shall determine and verify the exact locations and conditions of existing utility property and specifically underground utility property with the utility owner prior to performing excavation or other work in the Work Site. Contractor shall be responsible for all costs, including costs for restoration of services, and resulting schedule impacts, when utility services are damaged or interrupted by its operations.

D. In the event of disruption or threat of disruption to utility services as a result of construction related activities, regardless of cause, Contractor shall promptly notify AUTHORITY, the affected utility, and fire and/or police agencies as necessary, and shall cooperate with those authorities.

E. Operation of utility or AUTHORITY water valves and hydrants by unauthorized personnel is strictly prohibited without obtaining written permission from the applicable authority prior to using any water hydrant or operating any water valve. No work shall be undertaken around fire hydrants until provisions for continued access and service have been approved by the local fire authority.

00508 NOTICES AND COMMUNICATIONS

A. All notices and other communications concerning this Contract shall be written in English and shall bear the number assigned to this Contract by AUTHORITY. Notices and other communications may be delivered personally, by telegram, by telephone facsimile, or by regular, certified, or registered mail. Notices and communications are effective when received.

B. Prior to issuance of the Notice to Proceed, a notice to AUTHORITY will be effective only if it is delivered to AUTHORITY's Contract Administrator, 2817

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Canal St., New Orleans, LA 70119. Following issuance of Notice to Proceed, all communications and notices shall be delivered to the Resident Engineer at the address designated by AUTHORITY. All correspondence shall reference the Contract number.

C. Prior to commencement of Work on the Project, a notice to Contractor will be effective if it is delivered to the individual who signed this Contract on behalf of Contractor at the address shown with that signature, to a corporate officer if Contractor is a corporation, to a general partner if Contractor is a partnership, or to another individual designated by Contractor in this Contract or in a written notice to AUTHORITY.

D. After commencement of Work on the Contract a notice to the Contractor will be effective when delivered to Project Manager or to the Project office at the location designated in Article 00505, Superintendence.

E. After the commencement of work, all formal communications shall be between the Contractor's Project Manager and the Resident Engineer.

00509 CONTRACTOR SUBMITTED DRAWINGS, PRODUCT DATA, AND SAMPLES

A. Contractor shall prepare and deliver to AUTHORITY such Working Drawings, Shop Drawings, Product Data, Samples, or similar submittals as necessary for performance of the Work or as required by the Contract. All such drawings, documents and Samples shall be submitted to AUTHORITY in a timely manner and in a sequence that facilitates review and causes no delay in the Work, or in the work of AUTHORITY or any other contractor or AUTHORITY working on the Project.

B. Unless otherwise stated in the Specifications, Contractor shall, within thirty (30) Days of Notice to Proceed, provide AUTHORITY with a list of drawings, Product Data, Samples, and other documents, which are to be submitted by the Contractor. The list required by this Article shall be accompanied by a schedule for the submission of these materials.

C. Prior to submitting drawings, Product Data, Samples, and other documents, Contractor shall ensure that the Material or other information upon which a submittal is based complies with all Contract requirements and Contractor has verified dimensions with field measurements, and field construction criteria. Contractor shall also check, coordinate and verify the compatibility of the various required submittals prior to transmitting them to AUTHORITY.

D. Drawings, Product Data, Samples, and similar submittals shall not modify any Contract requirement, except as expressly allowed by this Contract. The purpose

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of their submittal is to demonstrate for those portions of the Work for which fabrication, procedures are not defined or details are not fully developed by the Contract Documents or for which submittals are required, the way Contractor proposes to comply with the Contract.

E. Contractor shall not be relieved of responsibility for any deviation from the requirements of this Contract by AUTHORITY's review or approval of Shop Drawings, Product Data, Samples, or similar submittals. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by AUTHORITY's review of the submittal. Contractor shall not deviate from a reviewed Shop Drawing, Product Data, Samples, or similar submittals without submitting the proposed deviation for AUTHORITY's review.

F. Working Drawings and other submittals offered to demonstrate methods, procedures, sequence or durations for performing the Work or to detail temporary elements such as shoring or falsework, shall be checked by AUTHORITY for compliance with applicable requirements of the Contract. Such checking will not include a detailed analysis of the design or an evaluation of the adequacy of the method, procedure, resource commitments or time allocated for performance.

G. Submittals which demonstrate that Materials to be used or incorporated in the Work comply with Contract requirements or which establish a level of quality will be reviewed for approval.

H. AUTHORITY will return or respond to submittals that are complete and require only AUTHORITY review or approval within ten (10) Days following the date received by the Resident Engineer. AUTHORITY will return or respond to submittals which require approval by other agencies within ten (10) Days following receipt of the AUTHORITY's comments or approval or fourteen (14) Days, whichever is earlier.

I. Any engineering or design work provided by the Contractor must be done by a Registered Professional Engineer licensed in Louisiana in the appropriate discipline for the work performed and AUTHORITY shall be entitled to rely on the accuracy and completeness of such engineering or design work including but not limited to the calculations underlying such work. All such calculations shall be signed and sealed by the Registered Professional Engineer.

00510 PROJECT RECORDS

A. The Contractor shall keep and maintain comprehensive records and documentation relating to the Work under this Contract. The records shall be in English, and shall include but are not limited to, Contract Documents, Subcontracts, Purchase Orders, Employment Records, Plans, Specifications,

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Addenda, Shop Drawings, Change Orders, Field Test Records, Quality Control documents, and As-Built Drawings and Records.

B. The Contractor shall maintain at the Work Site a set of the Plans and Specifications kept current with all changes and modifications and shall at all times give AUTHORITY access thereto.

C. The Contractor shall also maintain, in addition to the Contract Plans and Specifications, a set of plans and specifications which shall include AUTHORITY's, Contractor's, Subcontractors' and all Suppliers' plans, drawings, and specifications and other documentation pertaining to the Work. The Contractor shall keep this set current by legibly marking the Contract Plans and Specifications or otherwise making a record showing actual construction and providing periodic updates to AUTHORITY. This set of as-constructed plans and specifications shall be ready for periodic inspection by AUTHORITY upon request. Failure to maintain a current set of as-constructed plans and specifications on site may be considered by AUTHORITY as Contractor's failure to perform the Work and an equitable adjustment in the Contract value may be unilaterally imposed by AUTHORITY.

The final set shall be turned over to AUTHORITY before Final Completion of the Work as a complete set of "as built" drawings and shall include AUTHORITY's, Contractor's, Subcontractors' and Suppliers' drawings and any and all field modified drawings. AUTHORITY's may require at anytime that the Contractor submit marked-up construction drawings which shall include, but is not necessarily limited to:

- (1) Locations and elevations of the various elements of the Work, referenced to the survey control baseline and project datum;
- (2) Locations of underground items referenced by distances and directions to permanent surface structures and by elevation to the project datum;
- (3) Field changes in dimension or detail;
- (4) Changes made by addendum, field order, or Change Order; and
- (5) Details not on the original Contract drawings.

D. Unless otherwise required by the Contract, the Contractor shall submit to AUTHORITY during Project Closeout, the "contract record documents" set and four (4) sets of record data in 3-ring vinyl binders with suitable indexing. All of the original warranties, guarantees and other original documents shall be included in one of the binders. These data shall include, but are not limited to product and equipment manufacturers, trade names, catalog data, Supplier and Subcontractor names with phone number, addresses and contact persons, maintenance and

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operating instructions and guarantees and warranties. The “As-built” submittal shall be on full size plan sheets and other submittals on 8-1/2” x 11” or 8-1/2” x 14” paper. Warranties and guarantees are to be original documents submitted in the form received from the manufacturer.

0511 DISPUTES

A. If a claim is not resolved in the partnering process or in accordance with Article 00513, the Contractor’s sole and exclusive remedy is to initiate court proceedings in Orleans Parish, Louisiana to resolve the claim. The Contractor shall not initiate court proceedings until the date on which the Contracting Officer has rendered its Final Decision in accordance with Article 00513.

The Contractor and AUTHORITY agree that the proper venue for court proceedings is Civil District Court, Orleans Parish, Louisiana. Any claim arising out of, under, or in connection with the Contract shall be governed by Louisiana law.

B. If the Contractor fails to initiate court proceedings within ninety (90) days following the Contracting Officer’s Final Decision such decision shall become final and binding on the Contractor and the Contractor will be deemed to have waived any right to initiate court proceedings.

C. Unless provided to the contrary in the Contract Documents, the Contractor shall continue to perform the Work and the AUTHORITY shall continue to satisfy its payment obligations to the Contractor, pending the final resolution of any claim in court or otherwise.

D. The Contractor and AUTHORITY agree that the prevailing party is entitled to recover its attorney fees and costs (including taxable costs) incurred in the court proceedings.

00512 SUBSTANTIAL COMPLETION

A. For all purposes under this Contract, Substantial Completion means completion of the Work, or a designated portion thereof, to a point where AUTHORITY and any owning AUTHORITY certifies that the Work or the designated portions can be used for the purpose for which they were intended.

B. When Contractor considers the Work to be substantially completed, it shall submit to AUTHORITY a written request for determination of Substantial Completion. Within twenty-one (21) Days after AUTHORITY receives Contractor’s written request, AUTHORITY shall notify the Contractor in writing whether Substantial Completion has occurred. If Substantial Completion has

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occurred, AUTHORITY shall issue a notice of Substantial Completion. In any event, AUTHORITY shall prepare and deliver to Contractor a written list of items to be completed or corrected.

C. When Contractor has completed all Work, corrected any deficiencies in the Work and any Work rejected by AUTHORITY and has submitted all required project records, documentation and reports, the Contractor shall notify AUTHORITY in writing that Contractor considers the Work finally complete and ready for final inspection in accordance with Article 00911, Final Completion, Final Acceptance and Final Payment.

00513 CLAIMS

A. The parties will endeavor to resolve any claims pursuant to the agreed partnering process. For any recovery or relief under or in connection with the Contract, the Contractor shall submit a written claim to the Resident Engineer. The written claim shall set forth:

- (1) The reasons for which the Contractor believes additional compensation will or may be due;
- (2) The claimed costs and time involved. The claimed costs must be certified by the Contractor's designated representative as being current, complete and accurate;
- (3) Contractor's plan for mitigating such costs; and
- (4) If ascertainable, the amount of the potential claim.
- (5) The written claim shall be given to the Resident Engineer within three (3) calendar days after an incident or event, causing a potential claim.

If the event or occurrence is claimed to be an act or omission of the AUTHORITY, written notice shall be given prior to commencing the portion of the Work to which such alleged act or omission relates. The notice requirements of this Article are in addition to any other notice requirements set forth in the Contract. In addition:

- (1) The Contractor's written claim shall include in sufficient detail the information necessary for the Resident Engineer to ascertain the basis and amount of the claim
- (2) The written claim shall be certified as being made in good faith and signed by the Contractor's designated representative.

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(3) In the spirit of the partnering process the Resident Engineer and Contractor agree to work together and discuss the claim so as to avoid unnecessary losses, delays, and disruptions in the Work.

(4) The Resident Engineer will render a decision on the claim no later than ten (10) days after receiving the Contractor's written claim.

B. Claims not resolved by the Resident Engineer and the Contractor will be forwarded to the Contracting Officer's Technical Representative ("COTR") for further review and consideration.

(1) The COTR may request that the Contractor supplement its claim and provide additional information as the COTR deems necessary.

(2) The COTR will issue a recommended decision promptly after receiving the Contractor's written claim and any additional information.

C. Claims not resolved by the COTR will be submitted to the Contracting Officer's Representative ("COR") for a Preliminary Final Decision.

(1) The COR may meet with the Contractor and engage in discussions to resolve the claim. The COR will attempt in good faith to resolve the claim.

(2) The COR will issue a Preliminary Final Decision as soon as practicable after reviewing the Contractor's claim.

D. Claims not resolved by the COR will be submitted to the AUTHORITY's Chief Executive Officer, herein referred to as the Contracting Officer ("CO").

(1) The CO will consider all the information submitted by the Contractor and the opinions and decisions of the Resident Engineer, COTR and COR.

(2) The CO may conduct further discussions and meetings with the Contractor. The CO may request additional information from the Contractor relating to the claim.

(3) The CO will issue a Final Decision no later than ninety (90) days after receiving the Contractor's written claim from the COR, or in such longer period of time as the CO deems necessary.

E. Claims not resolved by the CO will be processed further in accordance with Article 00511 Disputes.

F. The Contractor agrees that it shall give the AUTHORITY and its representatives access to its books, records and other materials relating to the

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Work, and shall cause its subcontractors to do the same, so the AUTHORITY can fully consider the claim.

G. In no event shall claims be made after Final Payment is made under Article 00911, Final Completion, Final Acceptance and Final Payment.

H. The AUTHORITY's decisions in matters relating to the artistic effect of the Work shall be final and binding on the Contractor.

END OF SECTION 00500 - CONTROL OF WORK

00600 MATERIALS

00601 GENERAL

Contractor shall use or incorporate in the Work only new Materials conforming to the Plans and Specifications. New Material shall be used in the manufacture of products to be incorporated in the Work unless otherwise specified.

00602 BUY AMERICA Not Used. Refer to SP-11

00603 SUBSTITUTION PROPOSALS AFTER AWARD OF CONTRACT

This Article defines “Substitution” and sets out requirements for requests for approval of Substitutions after award of the Contract. For the purposes of this Article, “Product” shall mean any manufactured item. AUTHORITY reserves the right to use the named or specified product or item to establish standards for equality, including aesthetic and visual characteristics, when specified in the technical specifications, performance, quality, availability and maintainability of the proposed product or item.

A. Definition

(1) Substitution: An item (a product, piece of equipment, service, or a method or technique of fabrication or construction) which does not conform to the Contract and is proposed by the Contractor in lieu of the item required by the Contract. Use of the item must be approved by AUTHORITY in accordance with the terms of this Article. A Substitution will be considered by AUTHORITY when:

- (a) The Substitution is due to the unavailability of the specified item; or
- (b) The Substitution is required for compliance with a final interpretation of code requirements or insurance regulations; or
- (c) The specified item will not perform as specified; or,
- (d) The manufacturer or fabricator does not certify or warrant performance of the specified item as required for its intended purpose; or
- (e) The Substitution is considered, in AUTHORITY’s sole judgment, to be beneficial to the completed Work.

B. Procedures

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(1) The Contractor shall notify AUTHORITY of any inappropriate or unavailable products, equipment, services or techniques that may be called for by the Contract.

(2) The Contractor may submit to AUTHORITY written requests for approval of Substitutions. AUTHORITY will consider only requests conforming to the requirements of this Article.

(3) AUTHORITY will be the sole judge of the acceptability of any proposed Substitution. The Contractor will be notified in writing of the approval or rejection of a properly submitted request. The Contractor shall not rely upon approvals made in any other manner. AUTHORITY's decision shall be final.

(4) Requests for Substitutions shall be submitted to the Resident Engineer through the Contract submittal process in sufficient time to avoid delays to the Work. The Contractor shall be responsible for any delay or cost resulting from untimely submittal of Substitution requests.

(5) Substitution requests must be submitted on AUTHORITY's Product Option/Substitution Request Form. A sample of this form is included in the 00300 Forms. The Contractor shall at the same time submit six copies of the information listed below, with any additional information the Contractor considers necessary to support the proposal. The Contractor has the burden of demonstrating that the proposed Substitution's function, quality and performance will be equal in all respects to that of the specified item. The following information is required as a minimum:

- (a) The reason for the request;
- (b) Complete data substantiating that the function, quality and performance of the proposed Substitution will be equal or superior in all respects to the performance of the specified item;
- (c) The impact of the proposed Substitution on the construction schedule;
- (d) The effect of the proposed Substitution on the Contract price;
- (e) The following information shall be included in the documentation for substitution of construction or fabrication methods:
 - (i) Detailed description of the proposed methods.
 - (ii) Drawings illustrating the proposed methods.
- (f) Product identification, including manufacturer's name and address, contact person and telephone number;

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- (g) Manufacturer's literature, including product description, performance and test data, and reference standards;
 - (h) Samples, if appropriate or required by AUTHORITY.
 - (i) The name and address of a reference person to similar projects on which the product, equipment service, method or technique, was used, date of installation and reliability and service record, if appropriate or required by AUTHORITY.
 - (j) An itemized comparison of the proposed Substitution with the specified product, equipment, service, method or technique;
 - (k) Assurance that the proposed Substitution will not affect dimensions or other elements of the Work, alternatively, full disclosure of any such effects.
 - (l) The name and address of the nearest supplier of maintenance and service parts and repair services for the proposed Substitution, and substantiation that adequate supplies of parts and repair services are readily available, if appropriate or required by AUTHORITY.
- (6) Prior to making a request for a Substitution, the Contractor shall investigate the proposed item, and determine that it is equal in all respects to the item specified. In making the request for a Substitution, the Contractor represents that:
- (a) It will provide the same warranty for the Substitution as for the item specified.
 - (b) It will coordinate installation of the Substitution into the Work, making changes as may be required for the Work to be complete in all respects.
 - (c) Price and schedule data provided under paragraphs 5(c) and 5(d) is complete and includes all related Contractor cost and schedule impacts.
 - (d) It waives all claims for additional time for performance and additional costs related to the Substitution that may become apparent following AUTHORITY's approval of the Substitution.

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(e) It will be responsible for the cost of performing any design or redesign including redesign of other affected parts of the Work and for securing AUTHORITY's approval of such design or redesign.

(7) The Contractor shall reimburse AUTHORITY for its costs of evaluating Substitutions, and for its design or redesign costs, unless the proposed Substitution is necessary due to causes beyond the Contractor's control, and of which the Contractor could not reasonably have known on the Bid Opening Date.

(8) Only complete requests submitted in accordance with this Article will be considered. The approval of Shop Drawings, Product Data, submittals, or other documents indicating or implying a Substitution shall not constitute approval of such Substitution.

(9) AUTHORITY will specifically approve or disapprove in writing all requested Substitutions. If a Substitution is approved, a Change Order will be prepared to incorporate the Substitution into the Contract. The Change Order will include any associated price or schedule adjustment.

(10) The Contractor shall not be entitled to an extension of time or reimbursement for additional costs associated with a Substitution proposed due to the unavailability of a specified item, if the specified item was available as of the date of the Notice to Proceed. Extensions of time or reimbursement of additional costs for Substitutions necessitated by deficiencies which render the specified item unacceptable will not be allowed when the deficiency was known or should have been known by the Contractor at the time bids were submitted.

00604 PRODUCT OPTION PROPOSALS AFTER AWARD OF CONTRACT

This Article defines "Product Option" and sets out requirements for requests for approval of Product Options after award of the Contract. For the purposes of this Article, "Product" shall mean any manufactured item. AUTHORITY reserves the right to use the named or specified product or item to establish standards for equality, including aesthetic and visual characteristics, when so specified in the Specifications, performance, quality, availability and maintainability of the proposed product or item.

A. Definition of Product Option:

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- (1) The use of an item demonstrated to be equal in all respects to an item specified by brand name or mark or as the product of one or more manufacturers or suppliers, whether or not followed by the terms “or equal” or “or approved equal”.
- (2) Equality shall be demonstrated by the Contractor following the procedures set out herein, and use of the item must be approved by AUTHORITY in accordance with the terms of this Article.

B. Procedures

- (1) The Contractor shall notify AUTHORITY of any inappropriate or unavailable products that may be called for by the Contract.
- (2) The Contractor may submit to AUTHORITY written requests for approval of Product Options. AUTHORITY will consider only requests conforming to the requirements of this Article.
- (3) AUTHORITY will be the sole judge of the acceptability of any proposed Product Option. The Contractor will be notified in writing of the approval or rejection of a properly submitted request. The Contractor shall not rely upon approvals made in any other manner. AUTHORITY's decision shall be final.
- (4) Requests for Product Options shall be submitted to the Resident Engineer through the Contract submittal process in sufficient time to avoid delays to the Work. The Contractor shall be responsible for any delay or cost resulting from untimely submittal of Product Option requests.
- (5) Product Option requests must be submitted on AUTHORITY's Product Option/Substitution Request Form. A sample of this form is included in the Bid Forms. The Contractor shall at the same time submit six copies of the information listed below, with any additional information the Contractor considers necessary to support the proposal. The Contractor has the burden of demonstrating that the proposed item is equal in all respects to the item specified. The following information is required as a minimum:
 - (a) The reason for the request;
 - (b) Complete data substantiating equality of the proposed product to the product specified.
 - (c) A certification that the proposed Product Option will neither increase the Contract Price nor increase contract milestone durations.

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- (d) Product identification, including manufacturer's name and address, contact person and telephone number;
- (e) Manufacturer's literature, including product description, performance and test data, and reference standards;
- (f) Samples, if appropriate or required by AUTHORITY.
- (g) The name and address of a reference person to similar projects on which the product was used, date of installation and reliability and service record, if appropriate or required by AUTHORITY;
- (h) An itemized comparison of the proposed Product Option with the specified product.
- (i) Assurance that the proposed Product Option will not affect dimensions or other elements of the Work, or full disclosure of any such effects.
- (j) The name and address of the nearest supplier of maintenance and service parts and repair services for the proposed Product Option and substantiation that adequate supplies of parts and repair services are readily available, if appropriate or required by AUTHORITY.

(6) Prior to making a request for a Product Option the Contractor shall investigate the proposed item, and determine that it is equal in all respects to the item specified. In making the request for a Product Option the Contractor represents that:

- (a) It will provide the same warranty for the Product Option as for the item specified.
- (b) It will coordinate installation of the Product Option into the Work, making changes as may be required for the Work to be complete in all respects.
- (c) It will be responsible for the cost of performing any design or redesign including redesign of other affected parts of the Work and for securing AUTHORITY's approval of such design or redesign.

(7) Only complete requests submitted in accordance with this Article will be considered. The approval of Shop Drawings, Product Data, submittals, or other documents indicating or implying a Product Option shall not constitute approval of such Product Option.

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(8) AUTHORITY will specifically approve or disapprove in writing all requested Product Options.

(9) The Contractor shall not be entitled to an extension of time or reimbursement for additional costs associated with a Product Option proposed due to the unavailability of a specified item, if the specified item was available as of the date of the Notice to Proceed.

Extensions of time or reimbursement of additional costs for Product Options necessitated by deficiencies which render the specified item unacceptable will not be allowed when the deficiency was known or should have been known by the Contractor on the Bid Opening Date.

00605 MATERIAL INSPECTION, SAMPLING AND TESTING

A. All Materials except Materials specified by brand name or mark or manufacturer, furnished for use or incorporation in the Work, shall be covered by quality certifications, test results or other documentation as required by the Contract to establish compliance of the products with contract requirements. Unless specific tests are required by the Specifications, Contractor may provide certifications to establish acceptability of the products furnished. Materials or products which require certification or other documentation shall not be incorporated until certifications have been delivered and the product approved by AUTHORITY for incorporation.

B. AUTHORITY's acceptance of Materials on the basis of compliance documentation, inspection or testing shall not relieve the Contractor of the obligation for conformance with the Contract.

C. References to standards, material specifications, test methods, or other publications of the Louisiana Department of Transportation and Development (LADOTD), American Association of State Highway and Transportation Officials (AASHTO), American Society for Testing and Materials (ASTM), American Railway Engineering and Maintenance of Way Association (AREMA), other governmental agencies, or other recognized national organizations are those officially adopted by those agencies and organizations. The applicable standard, test method, material specification, or other reference is that which is in effect on the date the IFB was issued.

D. When the Contract requires documentation that Materials comply with a given specification or standard, the Contractor shall provide documents which include a certification that the Material conforms with all applicable Contract requirements. The documentation shall identify the Material, list the applicable specifications

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and tests covered by the certification, describe the source of the Material, and the quantity of Material certified.

The certifying document shall originate with manufacturer or producer of the Material and shall bear the signature of a person qualified to perform the certification and authorized to sign on behalf of the manufacturer or producer. If applicable, the certificate shall list any marking or other identification of the certified Material.

E. For fabricated or manufactured Materials, in addition to the documentation required by Paragraph D of this Article, the Supplier shall furnish documentation that the fabrication or manufacturing process complies with Contract requirements. The documentation shall be comparable to that required by Paragraph D of this Article and shall list the name and address of the manufacturer or fabricator, the specific processes covered by the certification and procedures and equipment used, tests performed and testing frequency, and any other pertinent information required to demonstrate Contract compliance.

F. For Materials specified or approved by brand name or mark, an identifying label or other marking affixed by the manufacturer, which contains sufficient information to verify that the Material furnished is the Material specified, will be accepted as documentation in lieu of additional certification. Other physical characteristics or packaging information may be accepted at AUTHORITY's discretion to demonstrate compliance.

G. AUTHORITY may require testing at the Contractor's expense of Materials which are delivered without acceptable identification, certification or other required documentation. Work which incorporates Materials for which the required documentation has not been provided, will be considered non-conforming work.

H. AUTHORITY reserves the right to sample and test any Material provided for use or incorporation into the Work. The Contractor shall furnish, at no cost to AUTHORITY, all samples requested for testing. If AUTHORITY's tests indicate that the Material tested does not comply with Contract requirements, all Material covered by the same certification as the test sample shall be considered as non-conforming.

I. If, at any time, AUTHORITY deems Contractor's quality control measures are not providing adequate inspection and testing, Contractor shall immediately take corrective action as directed by AUTHORITY.

00606 AUTHORITY FURNISHED MATERIALS

A. Materials listed in the Contract as AUTHORITY furnished will be available to the Contractor free of charge at the location indicated, unless otherwise specified.

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B. With respect to AUTHORITY furnished materials, the Contractor shall:

- (1) Be responsible for all costs for loading, unloading, transporting, storing and handling Materials until incorporated into the Work.
- (2) Install and make the Material fully operational, in accordance with the Contract and manufacturer's requirements, including furnishing all incidental parts and materials, and scheduling code and other required inspections and tests.
- (3) Commencing on the date of the Notice to Proceed or, if not in storage when the Notice to Proceed is issued, on the date Material is made available to the Contractor, whichever is later, assume responsibility for storage and demurrage charges and replacement of Materials lost or damaged from any cause, at no cost to AUTHORITY.
- (4) Notify AUTHORITY immediately upon discovery of any deficiency or defect in Materials furnished.

C. All Materials furnished by AUTHORITY will remain the property of AUTHORITY. Excess Material not incorporated in the Work, shall be stored on site at a central, accessible location approved by AUTHORITY until such time as delivery of the Material by the Contractor is made to a site identified by AUTHORITY.

00607 HANDLING AND STORAGE OF MATERIALS

A. Materials shall be so stored as to preserve their quality and fitness for the Work. Stored Materials, even though determined acceptable before storage, may again be inspected prior to their use in the Work. Stored Materials shall be arranged so as to facilitate their prompt inspection. The Contractor will be responsible to provide storage for all stored materials corresponding to the materials requirements. Private property shall not be used for storage purposes without written permission of the owner or lessee. Any use of private property by Contractor shall comply with all applicable zoning, land use restrictions, and other regulatory requirements. Copies of such written permission shall be furnished AUTHORITY upon request.

B. AUTHORITY furnished Materials or Materials paid for prior to incorporation shall be stored in secure locations approved in writing by AUTHORITY in a manner which will preserve their full value. Such Materials shall be prominently labeled as property of AUTHORITY and shall not be commingled with non-

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AUTHORITY Materials. If necessary, storage shall be in controlled environment buildings. If Materials are stored on private property, the Contractor shall furnish AUTHORITY with written permission for storage, signed by the owner or lessee, which guarantees access to AUTHORITY and rights of removal.

C. All Materials shall be handled and transported in such a manner as to preserve their quality and fitness for the Work.

00608 CARGO PREFERENCE - USE OF U.S. FLAG VESSELS NOT USED.

00609 FLY ASH

If cement or concrete is to be provided pursuant to this Contract, Contractor may use fly ash as an optional or alternate material unless noted otherwise in the Contract Documents. Any use of fly ash in cement or concrete shall be in accordance with the Specifications and the standards referenced in 40 CPR Part 249 and the Specifications of this Contract.

END OF SECTION 00600 – MATERIALS

00700 LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

00701 PERMITS, FEES, AND NOTICES

A. Contractor shall be fully responsible for identifying, securing, and paying for all necessary licenses, fees, inspections, waivers, utility connection fees, building and other permits, and similar authorizations from governmental and utility authorities, required to fulfill the Contract requirements and Contractor's obligations except for those identified in the Contract as being furnished or paid for by AUTHORITY.

B. Contractor shall give all notices required for timely compliance with applicable federal, state, and local laws, ordinances, rules, regulations, and restrictions. Upon written request, Contractor shall furnish AUTHORITY with satisfactory documentation evidencing compliance with the applicable requirements.

00702 COMPLIANCE WITH LAWS AND REGULATIONS

A. The Contractor acknowledges that it has familiarized itself with the requirements of any and all applicable federal, state, county, and local laws, ordinances, codes, rules, and regulations, and the conditions of any required licenses and permits prior to entering into this Contract. Contractor shall comply with any and all of the foregoing at its sole cost and expense and without any increase in Contract price or Contract time on account of such compliance, regardless of whether such compliance would require additional labor, equipment, and/or materials not expressly provided for in the Contract.

B. The following is a list of federal, state, and local agencies, of which AUTHORITY has knowledge, that have enacted ordinances or regulations relating to the prevention of environmental pollution and the preservation of natural resources, or other matters that may affect the performance of this Contract:

- Federal Agencies
 - Agriculture, Department of Forest Service
 - Soil Conservation Service
 - Defense Department of Army Corps of Engineers
 - Energy, Department of Federal Energy Regulatory Commission
 - Environmental Protection Agency
 - Interior,
 - Department of the Homeland Security Administration
 - Heritage, Conservation, and Recreation Service
 - Bureau of Land Management

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Bureau of Reclamation
Geological Survey
Minerals Management Service
Fish and Wildlife Service
National Park Service
Labor,
 Department of Occupational Safety and Health Administration
 Mine Safety and Health Administration
 Nuclear Regulatory Commission
Transportation, Department of

 Federal Transit Administration
 Federal Highway Administration
 Federal Railroad Administration
 Federal Aviation Administration
Treasury,
 Department of Bureau of Alcohol, Tobacco and Firearms

Water Resources Council
 MCFCD (flood control district)

State of Louisiana Agencies
 Louisiana Department of Transportation & Development
 Louisiana Department of Environmental Quality
 Louisiana Department of Culture, Recreational & Tourism

Local Government
 City of New Orleans
 Sewerage and Water Board of New Orleans
 New Orleans Building Corporation

C. Contractor shall adhere to all applicable federal, state, and local laws, regulations, and policies, including, but not limited to all applicable provisions of the Contract Work Hours and Safety Standards Act, equal employment opportunity, nondiscrimination in services and affirmative action, including all regulations implementing Executive Order No. 11246 of the President of the United States, as amended by Executive Order 11375, Section 402 of the Vietnam Readjustment Assistance Act of 1974, Section 503 of the Rehabilitation Act of 1973, and all applicable terms and conditions prescribed for third party contracts by the U.S. Department of Transportation.

D. Contractor shall comply with, and make a part of each Subcontract in excess of one hundred thousand dollars (\$100,000.00), all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which

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prohibit the use under nonexempt Federal Contracts, grants or loans, of facilities included on the EPA List of Violating Facilities. Any violation of these laws, rules, or regulations shall be reported immediately to the Administrator of FTA and to the United States Environmental Protection AUTHORITY, Assistant Administrator for Enforcement (EN-329).

E. Contractor shall maintain at the Work Site copies of all permits, licenses, certificates, or other documentation demonstrating compliance with any applicable statute, regulation, ordinance, or rule or other requirements of this Contract. Contractor shall provide copies of such documentation to AUTHORITY promptly upon request.

F. Contractor shall be liable for and shall pay all fines, assessments, and other costs resulting from Contractor's violation of any applicable federal, state, or local statute, regulation, ordinance, or other restriction.

G. Contractor shall not be entitled to any additional compensation or extension of time as a result of Contractor's violation of applicable regulatory requirements. If a delay results from such a violation, Contractor shall be responsible for all costs including, but not limited to, overtime premium associated with regaining the time lost as a result of such delay, and any damages, including liquidated damages, which may result from Contractor's failure to comply with the Construction Schedule as a result of such delay.

00703 TAXES

Unless otherwise provided in the Contract, Contractor shall pay all sales use, and other similar taxes that are enacted on the Bid Opening Date.

00704 LIENS PROHIBITED

Contractor shall not permit any lien or claim to be filed or prosecuted against AUTHORITY, its property or its right-of-way on account of any labor or material furnished or any other reason for work arising out of this Contract. If any lien shall be filed, Contractor shall satisfy and discharge or cause such lien to be satisfied and discharged immediately.

00705 PAYMENT OF CLAIMS BY AUTHORITY

If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a Subcontractor by any person in connection with this Contract as the claim becomes due, AUTHORITY may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due

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or to become due to Contractor pursuant to this Contract. AUTHORITY's payment of a claim under this Article shall not relieve Contractor or Contractor's surety from responsibility for such claims.

00706 INDEMNIFICATION

A. Contractor shall indemnify, hold harmless, and defend the Regional Transit Authority, its Members, State of Louisiana/Louisiana Department of Transportation and Development, Veolia Transdev and its affiliates, the City of New Orleans and their respective consultants, representatives, officers, directors, and employees (collectively, the "Indemnified Parties"), from any loss or claim made by third parties including legal fees and costs of defending actions or suits, resulting directly or indirectly from Contractor's performance or nonperformance of this Contract, where the loss or claim is attributable wholly or in part to the negligence or other fault of Contractor, its employees, representatives, or Subcontractors.

If the loss or claim is caused by the joint or concurrent negligence or other fault of one or more of the Indemnified Parties and Contractor, the resulting damages shall be borne by each in proportion to the degree of negligence or other fault attributable to each. Contractor's obligation to indemnify the parties listed above shall not be limited by the types or amounts of insurance required by this Contract.

B. This indemnity shall survive the termination of this Contract or Final Payment hereunder. This indemnity is in addition to any other rights or remedies which AUTHORITY and the other parties to be indemnified may have under the law or under this Contract. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, AUTHORITY may in its sole discretion reserve, retain or apply any monies due to the Contractor under the Contract for the purpose of resolving such claims; provided, however, that AUTHORITY may release such funds if the Contractor provides AUTHORITY with adequate assurance of the protection of AUTHORITY's interests. AUTHORITY shall be the sole judge of whether such assurances are adequate.

00707 CONSTRUCTION SAFETY AND SECURITY

A. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, including the work of Subcontractors. This responsibility cannot be delegated to the Regional Transit Authority/Veolia Transdev or its affiliates (AUTHORITY), Subcontractors, Suppliers, or other persons. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

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- (1) the public, all employees on the Work and all other persons who may be affected thereby;
- (2) all the Work and all Materials and equipment to be incorporated therein, whether in storage on or off the Work Site, under the care, custody or control of the Contractor or any of its Subcontractors; and
- (3) other property at the Work Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

B. Contractor and all tiers of Subcontractors must follow all federal, state and local statutes, rules, regulations and orders applicable to the conduct of the Work.

C. In the event of an accident or safety related claim arising from or related to the Work, Contractor shall immediately notify: Construction Safety Officer Regional Transit Authority 2817 Canal St. New Orleans, LA 70119.

00708 INTELLECTUAL PROPERTY

A. AUTHORITY, including its successors in interest, shall have the right, within the scope of the Contract, or for the purposes of operating and maintaining the Materials supplied, to use, duplicate, modify, and disclose all technical data, including computer software and documentation, developed under this Contract, and the information conveyed therein, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

The Contractor warrants that the Materials used on or incorporated in the Work shall be delivered free of any rightful claim of any third party for infringement of any patent or copyright. If notified promptly in writing and given authority, information, and assistance, the Contractor shall defend, or may settle, at its expense, any suit or proceeding against AUTHORITY, its staff, Consultants and their staffs, so far as it is based on a claimed patent or copyright infringement which would result in a breach of this warranty and the Contractor shall pay all costs, damages, and attorneys' fees awarded therein against AUTHORITY, its staff, Consultants, and their staffs due to such breach. The Contractor shall promptly report to AUTHORITY in writing in reasonable detail, each notice or claim of patent or copyright infringement, arising out of the performance this Contract, of which the Contractor has knowledge.

In the event of any claim or suit against AUTHORITY on account of any alleged patent or copyright infringement arising out of the performance of this Contract, the Contractor shall furnish to AUTHORITY all evidence and information in the

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possession of Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of Contractor.

B. The Contractor shall indemnify, save and hold harmless FTA and AUTHORITY, their officers, agents, and employees, and Consultants, acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising from the use of patented or proprietary Materials or processes used on or incorporated in the Work. If the use of such Materials or processes is held to constitute an infringement and is enjoined, the Contractor shall, at its own expense:

- (1) Secure for AUTHORITY the right to continue using said Materials or processes by lifting the injunction or by procuring a license or licenses; or
- (2) Replace the infringing Materials or processes with non-infringing Materials or processes; or
- (3) Modify the Materials or processes so that they become non-infringing or remove the enjoined Materials or processes and refund the sum paid by AUTHORITY therefore without prejudice to any other rights of AUTHORITY.

C. The preceding Paragraph B shall not apply to any Materials or processes specified by AUTHORITY or its Consultants or manufactured to the design of AUTHORITY or its Consultants or in accordance with the details contained in the Plans and Specifications; and as to such Materials and processes the Contractor assumes no liability whatsoever for patent or copyright infringement and AUTHORITY will hold the Contractor harmless against any claims arising there from.

D. If any invention, improvement or discovery of Contractor is conceived or first actually reduced to practice in the course of or under this Contract, which invention, improvement, or discovery may be patentable under the laws of the United States of America or any foreign country, the Contractor shall immediately notify AUTHORITY and provide a detailed report. Such patent rights arising out of the Work, as well as information, designs, specifications, know-how, data, and findings are work made for hire and owned by the AUTHORITY. They shall be made available for public use, unless AUTHORITY shall, in specific cases where it legally permissible, determine that it is in the public interest that it not be made available.

E. Contractor shall deliver all technical data, including computer software and documentation, to AUTHORITY. All software created and provided hereunder shall be considered a work made for hire under contract to AUTHORITY and Contractor shall take any and all steps necessary and execute all formal

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agreements to fully vest copyright in AUTHORITY. All software created hereunder shall be owned by AUTHORITY and shall be considered a intellectual property of AUTHORITY, and Contractor shall not publish any software created for AUTHORITY hereunder.

Contractor shall provide AUTHORITY with a properly executed copyright registration and assignment or other documentation vesting in AUTHORITY sufficient ownership of each such item of technical data to allow AUTHORITY to use, duplicate, modify, and disclose such data lawfully, and without additional payment, within the scope of the Contract, or for the purpose of operating and maintaining the Materials supplied, and to use, duplicate, modify, and disclose the same and the information conveyed therein, in whole or in part, and to permit others to do the same. No copyright matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for AUTHORITY and its successors in interest to use, duplicate, modify, and disclose the same in the manner described herein. Contractor shall have no rights in software developed by AUTHORITY, even if such software is embedded in Contractor supplied software or functionally equivalent to Contractor supplied software, or even structure, and overall organization to Contractor supplied software.

00709 RIGHTS IN DATA

A. The term “subject data” as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.

B. The following restrictions apply to all subject data first produced in the performance of this Contract:

(1) Except for Contractor’s use in conjunction with the Work required by this Contract, Contractor may not publish or reproduce such data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of AUTHORITY.

(2) As authorized by 49 C.F.R. Part 18.34, the Federal Transit Administration (FTA) reserves a royalty-free, non-exclusive and

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irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) Any work developed under this Contract, irrespective of whether or not a copyright has been obtained; and

(b) Any rights of copyright to which Contractor purchases ownership under this Contract.

C. When FTA provides assistance to a recipient for a Project involving planning, research, development, or a demonstration, it is FTA's intent to increase the body of mass transportation knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, Contractor understands and agrees that, in addition to the rights set forth in this Article, FTA may make available to any FTA recipient, sub-grantee, sub-recipient, third party contractor, or third party Subcontractor, either FTA's license in the copyright to the "subject data" derived under this Contract or a copy of the "subject data" first produced under this Contract.

D. The Contractor shall indemnify, save and hold harmless FTA and AUTHORITY, their officers, agents, and employees, and Consultants, acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Contract.

E. Nothing contained in this clause shall imply a license to the FTA under any patent or be construed as affecting the scope of any license or other right otherwise granted to the FTA under any patent.

F. In the event that this Contract is not completed, for any reason whatsoever, all data developed under this Contract shall become subject data as defined in Paragraph A of this Article and shall be delivered as AUTHORITY or FTA may direct.

00710 OWNERSHIP OF WORK AND MATERIAL

All Work performed by Contractor pursuant to this Contract shall be the property of AUTHORITY. AUTHORITY shall own all construction, and any data, documents, plans, specifications, working papers, computer programs, photographs, or other material produced by Contractor pursuant to this Contract, and Contractor hereby assigns and transfers to AUTHORITY any and all copyrights for such materials.

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As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to AUTHORITY at the time of the payment. To the extent that title has not previously been vested in AUTHORITY by reason of payments, full title shall pass to AUTHORITY at Final Acceptance. Work to which AUTHORITY has received title by reason of progress, partial or other payments shall be segregated from other Contractor or Subcontractor materials and clearly identified as AUTHORITY property. The title transferred as above shall in each case be good, and free and clear of any and all security interests, liens, or other encumbrances. The Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any way that would result in any lien, security interest, charge, or claim upon or against said items.

The transfer of title as provided above shall not imply acceptance by AUTHORITY, nor relieve the Contractor from the responsibility to strictly comply with the Contract, and shall not relieve the Contractor of responsibility for any loss of or damage to such items. The Contractor shall insert provisions in its subcontracts sufficient to ensure compliance with the content of this Article.

00711 CONSULTANT CONFLICT OF INTEREST

Contractor shall not use any consultant who concurrently is employed by AUTHORITY or by AUTHORITY's consultants, including, but not limited to, surveyors, engineers, architects, and testing laboratories without first obtaining AUTHORITY's approval in writing.

00712 CONSERVATION

Contractor shall comply with 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 sections 6321 et seq.).

00713 HISTORICAL, SCIENTIFIC, AND ARCHAEOLOGICAL DISCOVERIES

Contractor shall immediately report the discovery of any articles of historical, scientific or archaeological interest to AUTHORITY. Contractor shall take all necessary steps to preserve the articles and shall cease operations which would affect the find until otherwise directed by AUTHORITY. The further operations of Contractor with respect to the discovery including disposition of the articles, shall be decided by AUTHORITY. As between Contractor and AUTHORITY, AUTHORITY shall have sole and exclusive title to any discovered articles.

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00714 MAINTAINING TRAFFIC

Contractor shall be responsible for safely and efficiently maintaining rail, vehicular, and pedestrian traffic in all areas affected by its Work, and shall comply with all requirements of authorities or owners having jurisdiction over the Work Site.

00715 NOISE AND VIBRATION CONTROL

A. Contractor shall comply with all applicable federal, state, and local laws, ordinances and regulations regarding control of noise and vibration.

B. Contractor is responsible for applying for and obtaining any noise variances necessary for the Work at its own expense.

C. All construction equipment used on the Work shall have sound control devices no less effective than the devices provided on the original equipment. Every internal combustion engine in construction equipment shall have a muffled exhaust, and shall comply with pertinent local, state and federal laws and regulations.

D. All equipment shall comply with pertinent equipment noise standards of the U.S. Environmental Protection AUTHORITY.

E. Contractor shall provide all necessary testing or monitoring equipment required to demonstrate compliance with this Article.

F. AUTHORITY or the responsible regulatory authority may conduct tests that it deems to be necessary or convenient to verify compliance with this Article. Contractor shall cooperate with and assist the testing personnel as required for the performance of their duties.

G. Contractor shall immediately modify its operations including any non-complying equipment to bring them within the acceptable limits of noise level as established by the U.S. Environmental Protection AUTHORITY and state and local requirements. Contractor shall bear all costs associated with modifying its operations and such non-complying equipment.

00716 PERMISSIBLE DAYS AND HOURS OF WORK

Unless otherwise provided for in the Special Provisions or Specifications, the following shall apply:

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A. Contractor shall comply with all applicable statutes, regulations, rules, ordinances, or other such measures which limit, restrict, or regulate the times of day and/or days of the week when any activities required by this Contract can be performed.

B. Contractor is responsible for applying for and obtaining any waivers or variances necessary for the Work at its own expense except for those specifically identified in this Contract as provided by AUTHORITY.

C. Contractor's compliance with such restrictions shall not be the basis of any claim for extensions of time or additional compensation unless AUTHORITY has expressly stated in this Contract that waivers, variances, or other authorizations shall apply to Contractor's activities, or specific portions thereof, and such waivers, variances, or other authorizations are unavailable at the specified date or are subsequently withdrawn and such unavailability or withdrawal did not result from some act or omission by Contractor.

00717 HAZARDOUS AND CONTAMINATED SUBSTANCE

A. General "Hazardous substances" shall mean those substances as defined in Louisiana Administrative Code-Title-33, Part-V, Chapter 101, Section 10105 "Contaminated substance" shall mean materials, including but not limited to soil, groundwater, surface water, and other materials that can only be legally disposed of in a regulated and permitted disposal facility. "Release" shall be given the meaning as defined in Louisiana Administrative Code-Title-33, Part-V, Chapter 101, Section 10105 . "Remediation Contractor" shall mean a contractor retained by AUTHORITY to provide all necessary labor, material, equipment, incidentals, transportation and facilities necessary to identify, characterize, remove, cleanup, remediate, and dispose of hazardous and contaminated substances encountered during construction that are not introduced to the Work Site by the Contractor.

(1) All work involving the removal, remediation, handling, transportation, treatment or disposal of hazardous and/or contaminated substances shall be performed by Remediation Contractor(s) who is licensed to perform such work and is contracted directly with the AUTHORITY, except as otherwise specified herein. All such work involving hazardous and/or contaminated substances shall be performed only by personnel who have been trained in accordance with 29 CFR 1910.120 and certified to perform such work. The Contractor shall comply with all relevant federal, state, and local statutes, rules, regulations and ordinances pertaining to such work. Contractor shall take all necessary precautions to protect Contractor personnel, AUTHORITY personnel, and the public from exposure to hazardous and/or contaminated substances.

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(2) Contractor shall be liable and indemnify and hold AUTHORITY harmless for any and all costs, expense, damages, claims, and causes of action of any kind, related to or arising out of a release of hazardous and/or contaminated substance to the extent such release was caused or contributed to by Contractor's intentional acts, negligence, or failure to perform in accordance with the Contract. Nothing in this Article shall limit Contractor's liability or responsibility under any other provisions of this Contract.

B. Unknown Hazardous and/or Contaminated Substances

(1) Contractor shall immediately cease working in any particular area of the Project where an unanticipated or unknown hazardous or contaminated substance has been discovered or encountered and shall immediately notify AUTHORITY unless the remediation or removal of such hazardous or contaminated substances is specifically part of the Work.

(a) Abnormal conditions or potential indicators of a hazardous or contaminated substance shall include, but shall not be limited to, the following:

- (i) Presence of underground storage tanks or drums.
- (ii) Discolored earth, metal, wood, or other debris
- (iii) Visible fumes/vapors.
- (iv) Obnoxious or unusual odors
- (v) Excessively hot earth.
- (vi) Smoke.
- (vii) Abnormal or irregular results from health and safety air monitoring.
- (viii) Any other condition which appears abnormal that could be a possible indicator of a hazardous and/or contaminated substance. Such conditions shall be treated with extraordinary caution.

(2) Upon being notified by Contractor of the presence of unanticipated or unknown hazardous or contaminated substances on the Work Site, AUTHORITY shall promptly investigate the conditions and provide further direction to the Contractor with respect to the hazardous or contaminated substance(s).

(3) The Contractor's activities shall not resume until so directed by AUTHORITY.

(4) Unless otherwise directed by AUTHORITY, Contractor shall take all appropriate measures, if feasible, consistent with protecting the health and safety of Contractor's employees, to stop or

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minimize the immediate spread of any hazardous substances encountered.

C. Contractor's Materials/Unknown Hazardous and Contaminated Substance Work Required by This Contract:

(1) Contractor shall obtain AUTHORITY's written consent prior to bringing into the Work Site any hazardous and/or contaminated substance(s). Notwithstanding such written consent from AUTHORITY, the Contractor, at all times, shall:

(a) Properly handle, store, use, and dispose of all hazardous and/or contaminated substances brought onto the Work Site, in accordance with all applicable federal, state and local regulations.

(b) In the event of a release, take all appropriate measures, consistent with protecting the health and safety of Contractor personnel, AUTHORITY personnel, and the public, to stop the spread of any hazardous and/or contaminated substance(s).

(c) Promptly clean up and dispose of materials resulting from the release, without cost to AUTHORITY, to the satisfaction of AUTHORITY and the governing regulatory agencies in accordance with all applicable federal, state, and local statutes, rules, regulations, and ordinances, and

(d) Be held liable and indemnify and hold AUTHORITY harmless for any and all releases during the performance of this Contract of hazardous and/or contaminated substances brought onto the Work Site by the Contractor.

(2) Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to AUTHORITY. A written follow-up report shall be submitted to AUTHORITY within forty-eight (48) hours of the telephonic report. Such written report shall contain as a minimum:

(a) Description of items released (identity, quantity, manifest number, and all other documentation required by law.)

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- (b) Whether amount of items released is EPA/LDEQ reportable, and, if so, when it was reported.
- (c) Exact time and location of release, including a description of the area involved.
- (d) Containment procedures initiated.
- (e) Summary of communications about the release which Contractor has had with members of the press or public officials.
- (f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- (g) Injuries to persons or damage to property, if any, resulting from or aggravated by, the release.

D. Environmental Cleanup Certificate:

(1) Contractor shall submit, as part of the documentation required for Final Acceptance or as a separate written notice submitted with or before the notice of Final Completion, copies of all disposal records and required permits and a certificate of environmental clean-up. Contractor shall certify that all hazardous and/or contaminated substance(s) which were produced, removed, cleaned-up, handled, transported, treated, or disposed of as a result of Contractor's activities under this Contract, including the clean-up of hazardous and contaminated substances brought onto the Work Site by Contractor or the removal and/or remediation of hazardous and contaminated substances which Contractor performed as part of the Work under this Contract, has been completed and the materials disposed of in accordance with all applicable federal, state and local statutes rules, regulations and ordinances, and to the satisfaction of all agencies having jurisdictions over such hazardous and contaminated substances.

00718 ASBESTOS PROVISIONS

A. Release shall be given the meaning as defined in Louisiana Administrative Code, Title 33, Part III, Chapter 27, Section 2703 and/or 40 C.F.R. 60.

B. All work involving asbestos or asbestos-containing materials (collectively "asbestos-containing materials"), shall be performed only by a contractor licensed and certified to perform such work. All work involving asbestos-containing materials shall be performed only by personnel who have been trained and certified to perform such work. The Contractor shall comply with all relevant federal, state, and local statutes, and regulations, pertaining to such work. Contractor shall take all necessary precautions to protect workers, AUTHORITY personnel, and the public from exposure to asbestos-containing materials.

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C. Contractor shall immediately notify AUTHORITY if asbestos-containing materials are discovered which were not previously identified in the Plans and Specifications. The Contractor shall immediately cease all activities which could cause the release of such materials. AUTHORITY will promptly advise the Contractor of further actions regarding the asbestos-containing materials.

D. For the demolition of structures identified under this Contract involving asbestos-containing materials, a licensed asbestos contractor shall observe all demolition activities for early identification of any additional asbestos-containing building materials.

E. Contractor shall be liable and indemnify and hold AUTHORITY harmless for any and all costs, expenses, damages, claims, and causes of action, or any of them, related to or arising out of a release of asbestos-containing materials to the extent such release was caused or contributed to by Contractor's intentional acts, negligence, or failure to perform in accordance with the Contract. Nothing in this Article shall limit Contractor's liability or responsibility under any other provisions of this Contract.

F. Any Work involving the demolition or abatement of asbestos containing materials in a state building shall be performed in accordance with Title 33, Part III, Chapter 27, Section 2703 and/or 29 C.F.R. 1926.1101.

00719 EXCAVATION BY THE CONTRACTOR

The Contractor shall comply with the requirements of Louisiana Utility Locates, regarding notification of utilities prior to undertaking any excavation required by this Contract.

00720 PUBLICITY AND ADVERTISING

Contractor, its subcontractors, and suppliers shall not publish nor cause to be published any advertisement or other material, including news releases and technical papers, regarding the subject matter of this Contract at any time without the prior written authorization of AUTHORITY. Contractor shall not display any signs, posters, or any other advertising matter in or on the Work or on or around the Work Site other than those prescribed by the Contract or by law without the prior written authorization of AUTHORITY.

In addition, advertising or other copy mentioning AUTHORITY or quoting the opinions of any of its employees shall not be released before such copy is approved in writing by AUTHORITY before release. Any material proposed for publication must be factual, and not state or imply endorsement by AUTHORITY of any firm, service, or product.

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00721 SEISMIC REQUIREMENTS

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in DOT Seismic Safety Regulations 49 CFR Part 41 and will certify to such compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

00722 INSURANCE

Prior to start of Work on this Contract, the Contractor shall submit Certificates of Insurance conforming in all respects to the detailed insurance requirements contained in the Contract Special Provisions, including but not limited to levels of coverage and details for submission.

END OF SECTION 00700 - LEGAL RELATIONS

00800 PROSECUTION AND PROGRESS

00801 TIME OF COMPLETION

Time is of the essence in the performance of this Contract. Contractor shall proceed with performance of the Work under this Contract immediately after receipt of the Notice to Proceed, and shall continuously and diligently prosecute the Work and specified portions thereof to completion on or before the time or times set forth in this Contract. Contractor shall not commence work until it receives the Notice to Proceed, except as otherwise required by this Contract.

00802 COMPUTATION OF TIME

All time periods measured in days shall be based upon calendar days, unless specified otherwise. Time periods measured in days shall be computed by excluding the day upon which the period begins to run and including the last day of the period unless the last day is Saturday, Sunday, or a Legal Holiday as defined in Article 00105, Definitions. If the last day of the period is a Saturday, Sunday, or Legal Holiday, the period shall run until, and shall include, the next day that is not a Saturday, Sunday, or Legal Holiday.

00803 PROGRESS SCHEDULE

The Contractor shall develop and deliver to AUTHORITY schedules for the Work. The schedules shall be complete in all respects including items to be submitted to AUTHORITY. Specific requirements for these schedules may be found in the Special Provisions and the Contract Specifications. The Construction Baseline Schedule, as accepted by AUTHORITY, shall be as described in the Specifications and shall set forth times for completion of various components of the Work and Contract Milestones; any such Contract Milestones have been established by the Special Provisions of the Contract.

The accepted Construction Baseline Schedule shall become part of the Contract and the Contractor shall be required to perform in accordance with this schedule or with the current accepted revision thereof.

00804 DELAYS AND EXTENSION OF TIME

A. The Contractor will be granted an extension of time for any delay on the critical path to completion of any contract milestone, based on the latest approved Construction Schedule, arising from acts of God, acts of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, earthquake, epidemics, quarantine restrictions, strikes, freight embargoes,

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unusually severe weather, or wrongful acts of owners or occupants of property adjoining the Work Site, provided that the aforesaid causes were not foreseeable and did not result from the fault or negligence of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays owing to such causes, and has notified AUTHORITY in writing of the cause or causes of delay within twenty-four (24) hours from the beginning of any such delay. Such delay shall not be the basis for a claim for additional compensation.

For the purposes of this Article, weather conditions shall not be deemed unusually severe if they fall within two standard deviations from the mean of data recorded by the U.S. Weather Bureau for the New Orleans Metropolitan area over the past twenty (20) years.

B. If Contractor is delayed in the progress of the Work by an act, omission, or neglect of AUTHORITY, its agents or representatives, or an act or omission of another contractor in the performance of a contract with AUTHORITY, Contractor shall, within twenty-four (24) hours after the commencement of such delay, file with AUTHORITY a written notice of delay together with a request for an extension of the Contract period for the portion of the Work so delayed.

The notice shall set forth in detail the reasons for the delay, and the period for which an extension is requested. If the delay results in unforeseen and additional expenses to Contractor in performing the Work, Contractor shall file with the written notice of such delay, a request for additional compensation, together with the Contractor's estimate of anticipated additional expense for which compensation is requested. Contractor may submit a revised request for an extension of time and/or additional compensation within fourteen (14) Days following the cessation of such delay.

C. When such a request is received, AUTHORITY will ascertain the reasons for and extent of such delay. If AUTHORITY determines that the cause was beyond the control and without the fault or negligence of Contractor and the facts justify an extension of time, or additional compensation, or both, the Contract will be modified accordingly, in writing, by a Change Order.

Unless the above notice and appropriate requests are filed with AUTHORITY pursuant to this Article within twenty-four (24) hours after commencement of the delay, or such other times as may be prescribed herein, no extension of time will be made or additional compensation allowed. In the case of a continuing cause of delay, only one request is necessary.

If AUTHORITY determines that the facts do not justify an extension of time or additional compensation, such request will be denied. AUTHORITY's findings of fact for either determination will be delivered to Contractor in writing. Contractor agrees that any extension of time and/or additional compensation granted under

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this Article shall be its sole and exclusive remedy for the consequences of any delay described above.

D. Unusually severe weather delays shall apply only if they affect particular portions of the Work and operations of the Contractor, as determined by AUTHORITY. The effects of weather more severe than the norm based on the criteria stated in Paragraph A, may be taken into account in granting time extensions.

E. An extension of time will not be granted for a delay caused by a shortage of Materials, except AUTHORITY-furnished Materials, unless the Contractor furnishes to AUTHORITY documented proof that it has made every effort to obtain such Materials from every known source within reasonable reach of the Work. The AUTHORITY shall be the sole judge of what is considered "within reasonable reach".

The Contractor shall also submit proof, in the form of schedule network analysis data, that the inability to obtain such materials when originally planned, did in fact cause a delay in completion of any contract milestone which could not be compensated for by revising the sequence of operations. Only the physical shortage of Materials will be considered under these provisions as a cause for extension of time.

No consideration will be given to any claim that materials could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of AUTHORITY that such material could have been obtained only at commercially prohibitive prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities and that such fact could not have been known or anticipated at the time the Contract was entered into.

F. No extension of time will be granted under this Article for any delay to the extent:

(1) that performance would have been so delayed by any Contractor induced causes including but not limited to the fault or negligence of the Contractor or its Subcontractors; or

(2) for which remedies are provided 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 but only one period of extension will be granted for the concurrent delay.

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G. An extension of time granted shall not release the Contractor's surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and said Contract shall be and shall remain in full force and effect during the continuance and until the Final Completion and Final Acceptance of the Work unless 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 or the making of payments to the Contractor after any such periods shall not constitute a waiver on the part of AUTHORITY of any rights under this Contract.

H. 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 or materials specified by the Contract after the time specified for the completion of the Work, shall be deemed to be a waiver by AUTHORITY of AUTHORITY's right to abrogate this Contract for abandonment or failure to complete within the time specified or to impose and deduct damages as may be provided herein.

00805 SUSPENSION OF WORK

A. AUTHORITY may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work for the period of time that AUTHORITY determines appropriate.

B. If the performance of all or part of the Work is, suspended, delayed, or interrupted for an unreasonable period of time:

- (1) by an act of AUTHORITY in the administration of this Contract, if not attributable to actions, inactions or defaults of the Contractor; or
- (2) by AUTHORITY's failure to act within the time specified in this Contract (or within a reasonable time if not specified),

an adjustment will be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified by issuance of a Change Order. However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent that 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 is provided for or excluded under any other term or condition of this Contract.

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00806 MAINTENANCE DURING SUSPENSION

In preparation for and during suspensions of Work, Contractor shall take every reasonable precaution to prevent damage to or deterioration of the Work. Contractor shall repair or replace at no cost to AUTHORITY Work that is damaged or deteriorated during a Work suspension due to Contractor's failure to comply with this Article. If AUTHORITY finds that Contractor is not taking a reasonable precaution and Contractor fails to take the precaution within forty-eight (48) hours after written notice from AUTHORITY, AUTHORITY may cause the precaution to be taken and recover the reasonable costs of taking the precaution from Contractor.

00807 FAILURE TO COMPLETE ON TIME

For each and every calendar day that Work remains incomplete after the time specified for the completion of the Work in the Contract, or as adjusted by the Change Orders, the sum per calendar day as specified in the Special Provisions may be deducted from the payment due to or becomes due to the Contractor, not as a forfeit or penalty but as liquidated damages.

Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time fixed for its completion may have been extended, will in no way operate as a waiver on the part of AUTHORITY of any of its rights under the Contract.

00808 USE OF COMPLETED PORTIONS OF THE WORK

A. Whenever, as determined by AUTHORITY, any portion of the Work performed by Contractor is in a condition suitable for use, and the best interests of AUTHORITY requires such use, AUTHORITY may take possession of or use such portion of the Work. Such use by AUTHORITY shall in no case be construed as final acceptance, and shall neither relieve the Contractor of any of its responsibilities under the Contract, nor act as a waiver by AUTHORITY of any of the conditions thereof.

The Contractor shall not be liable for the cost of repairs, rework, or renewals which may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of the Work, the Contractor shall notify AUTHORITY in writing as required by the Contract and shall be entitled to such additional compensation or extension of time, or both, as determined in accordance with Article 00406, Changes in the Work. Any disputes regarding such entitlement shall be resolved in accordance with the provisions of Article 00511, Disputes.

B. If in the course of such use the Work proves to not be in compliance with the Contract, AUTHORITY shall have the right to continue such use until such

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portion of the Work can, without injury to AUTHORITY, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory Materials, as necessary for such portions of the Work to comply with the Contract. The Contractor shall complete the repairs within a reasonable time as agreed by the AUTHORITY.

C. The Contractor shall not use any permanently incorporated Materials unless such use is approved in writing by AUTHORITY. Where Contractor's request is granted for the use of certain Materials, the Contractor shall properly use and maintain, and upon completion of its use, and at its own expense, recondition such Materials to the satisfaction of AUTHORITY.

00809 PRIME CONTRACTOR PARTICIPATION

A. The Contractor shall perform a minimum percentage of the Work, on the Work Site, with Contractor's own organization. This percentage is set forth in the Special Provisions. Items designated as "Specialty Items" in the Special Provisions, if subcontracted, will be deducted from the original Contract price before computing the amount of Work required to be performed by the Contractor's own organization.

B. The phrase "Contractor's own organization" as used in this Article includes only workers employed and paid directly by the Contractor, equipment owned or rented by the Contractor, and incidental rental of operated equipment.

C. Only pay items of the Contract shall be used in computing the total amount of Work done at the Work Site. If an entire pay item is subcontracted, the amount of Work subcontracted will be the total amount bid for the pay item.

D. If a portion of a pay item is subcontracted, the amount of Work subcontracted will be determined by multiplying the estimated percentage of the pay item subcontracted by the total amount bid for the pay item, determined from information submitted by the Contractor and subject to AUTHORITY's approval.

00810 SUBCONTRACTORS AND SUPPLIERS

A. No Subcontract shall relieve Contractor of any of Contractor's obligations or liabilities under the Contract. Contractor shall be fully responsible and liable for the acts or omissions of all Subcontractors and Suppliers including persons directly or indirectly employed by them, their guests and invitees. The Contractor shall have sole responsibility for managing and coordinating the operations of its Subcontractors and Suppliers, including the settlement of disputes with or between them.

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B. Nothing contained in this Contract shall be deemed to create a contractual relationship between any Subcontractor or Supplier and AUTHORITY.

00811 IDENTIFICATION AND APPROVAL OF SUBCONTRACTORS

A. Contractor shall be allowed up to ten (10) full working days after the Notice of Award date to request in writing to the AUTHORITY any proposed changes, modifications or substitutions to its proposed list of Subcontractors submitted at bid opening under Bid Form F, "Proposed Subcontractors." Any requested changes, modifications or substitutions shall conform to all the requirements of Bid Form F.

Any request for substitution shall identify the Work to be performed by the substituted Subcontractor and whether the substituted Subcontractor is a Disadvantaged Business Enterprise (DBE), along with an estimated contract value of the Work to be performed by the substituted Subcontractor.

B. AUTHORITY shall promptly review the proposed subcontractors and may disapprove a proposed Subcontractor based upon the criteria stated in Section I INSTRUCTION TO BIDDERS.

C. If Contractor proposes to subcontract a portion of the Work, not identified with the submission of the Bid, following award of the Contract, Contractor shall obtain AUTHORITY's approval prior to entering into the Subcontract by following the procedure in Article 00813, Substitution of Subcontractors.

D. A Subcontractor may be rejected by AUTHORITY if it has breached a contractual obligation or if that Subcontractor failed to substantially perform the obligation, regardless of whether that failure was formally designated a breach of contract by the contracting AUTHORITY. Failure to complete performance of an obligation on time, including, but not limited to, failure to meet a contract milestone date on a prior AUTHORITY contract, shall be deemed a failure to substantially perform that obligation.

00812 SUBCONTRACT PROVISIONS

Contractor shall include in each Subcontract, and require each Subcontractor to include in any lower tier Subcontract, any provisions necessary to make all of the provisions of this Contract fully effective. Contractor shall provide all necessary Plans, Specifications, and instructions to its Suppliers and Subcontractors to enable them to properly perform their work.

00813 SUBSTITUTION OF SUBCONTRACTORS

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Contractor shall request in writing AUTHORITY's written approval before replacing a Subcontractor. The request shall contain the information required in Article 00811, Identification and Approval of Subcontractors. If Contractor wishes to replace a DBE Subcontractor, Contractor shall use good faith efforts to substitute another qualified DBE Subcontractor. Substitute Subcontractors will be evaluated in the same manner as Subcontractors identified in the bid.

00814 TERMINATION FOR CONVENIENCE

A. AUTHORITY may terminate performance of work under this Contract in whole, or in part if AUTHORITY determines that a termination is in the best interest of the AUTHORITY. AUTHORITY shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

B. After receipt of a Notice of Termination, and except as directed by AUTHORITY, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice,
- (2) Place no further subcontracts or orders (referred to as subcontracts in this Article for materials, services, or facilities, except as necessary to finally complete the continued portion of the Contract.
- (3) Terminate all subcontracts or orders to the extent they relate to the work terminated.
- (4) Assign to AUTHORITY, as directed by AUTHORITY, all right, title and interest of the Contractor under the Subcontract terminated, in which case AUTHORITY shall have the right to settle or to pay any termination settlements proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by AUTHORITY, settle all outstanding liabilities and termination settlement proposals arising from the termination of the Subcontract; the approval or ratification will be final for purposes of this Article.
- (6) As directed by AUTHORITY, transfer title and deliver to AUTHORITY
 - (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated, and

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(ii) the completed or partially completed Plans, drawings, information and other property that, if the Contract had been finally completed, would be required to be furnished to AUTHORITY.

(7) Finally complete performance of the Work not terminated,

(8) Take any action that may be necessary, or that AUTHORITY may direct, for the protection and preservation of the property related to this Contract that is in possession of the Contractor and in which AUTHORITY has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by AUTHORITY, any property of the types referred to in sub-paragraph (6) above; provided, however, that the Contractor

(i) is not required to extend credit to any purchaser and

(ii) may acquire the property under the conditions prescribed by, and at prices approved by AUTHORITY. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by AUTHORITY under this Contract, credited to the price or cost of the Work, or paid in any other manner directed by AUTHORITY.

C. After termination, the Contractor shall submit a final termination settlement proposal to AUTHORITY in the form and with the certification prescribed by AUTHORITY. The Contractor shall submit the proposal promptly, but no later than one (1) year from the effective date of termination, unless extended in writing by AUTHORITY upon written request of the Contractor within this one (1)-year period.

However, if AUTHORITY determines that the facts justify it, a termination settlement proposal may be received and acted on after one (1) year or any extension. If the Contractor fails to submit the proposal within the time allowed, AUTHORITY may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

D. Subject to Paragraph (C) above, the Contractor and AUTHORITY may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on Work done. However, the agreed amount, whether under this Paragraph (D) or Paragraph (E) below, exclusive of costs shown in subparagraph (E)(2) below, may not exceed the total Contract price as reduced by (1) the amount of payments previously

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made and (2) the Contract price of Work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount. Paragraph (E) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this Paragraph.

E. If the Contractor and AUTHORITY fail to agree on the whole amount to be paid the Contractor because of the termination of Work, AUTHORITY shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under Paragraph (D) above:

(1) For contract Work performed before the effective date of termination, the total (without duplication of any items) of:

(a) The cost of the Work;

(b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision (a) above; and

(c) A sum, as profit on (a) above, determined by AUTHORITY to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Contract had it been finally completed, AUTHORITY shall allow no profit under this subdivision (c) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the Work terminated, including:

(a) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(b) The termination and settlement of subcontracts excluding the amounts of such settlements; and

(c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

F. Except for normal spoilage, and except to the extent that AUTHORITY expressly assumed the risk of loss, AUTHORITY shall exclude from the amounts payable to the Contractor under Paragraph E. above, the fair value, as determined by AUTHORITY of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to AUTHORITY or to a buyer.

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G. The Contractor shall have the right of appeal, under the Article 00511, Disputes, from any determination made by AUTHORITY under Paragraph (C), (E), or (I), except that if the Contractor failed to submit the termination settlement proposal within the time provided in Paragraph (C) or (I), and failed to request a time extension, there is no right of appeal. If AUTHORITY has made a determination of the amount due under Paragraph (C), (E), or (I), AUTHORITY shall pay the Contractor (1) the amount determined by AUTHORITY if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

H. In arriving at the amount due the Contractor under this Article, there shall be deducted:

- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;
- (2) any claim which AUTHORITY has against the Contractor under this Contract; and
- (3) The agreed price for, or the proceeds of sale of, Materials, supplies, or other things acquired by the Contractor or sold under the provisions of this Article and not recovered by or credited to AUTHORITY.

I. If the termination is partial, the Contractor may file a proposal with AUTHORITY for an equitable adjustment of the price(s) of the continued portion of the Contract. AUTHORITY shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) Days from the effective date of termination unless extended in writing by AUTHORITY.

- (1) AUTHORITY may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if AUTHORITY believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to AUTHORITY upon demand, together with interest computed at the rate established in Article 00906, Interest on Overdue Payments for the period from the date the excess payment is received by the Contractor to the date the excess is repaid.

J. Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract.

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The Contractor shall make these records and documents available to AUTHORITY, at the Contractor's office, at all reasonable times, without any direct charge. If approved by AUTHORITY, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

00815 TERMINATION FOR DEFAULT

A. AUTHORITY may terminate this Contract for default if:

- (1) The Contractor is in material breach of any provision of this Contract;
- (2) The Contractor abandons the Contract;
- (3) The Contractor makes a general assignment of this Contract for the benefit of creditors;
- (4) The Contractor repeatedly fails to make prompt payment to Subcontractors or for Material or labor; or
- (5) The Contractor disregards laws, regulations, ordinances, the orders of a legal authority, or the instructions of AUTHORITY; and the Contractor has not remedied the breach within ten (10) Days after receiving written notice from AUTHORITY.

B. In addition to its right to terminate the Contract for the reasons set forth in Paragraph A of this Article, if the Contractor refuses or fails to prosecute the Work or any separable part, with the diligence that will insure its completion within the time specified in this Contract including any extension, AUTHORITY may, by written notice to the Contractor and with copy to surety, terminate the right to proceed with the Work (or the separable part of the Work) that has been delayed. In this event, AUTHORITY may take over the Work and complete it by contract or otherwise, and may take possession of and use any Materials, appliances, and plant on the Work Site necessary for completing the Work.

The Contractor and its sureties shall be liable for any damage to AUTHORITY resulting from the Contractor's refusal or failure to complete the Work within the specified time, or for liquidated damages for delay, as fixed in the Contract, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by AUTHORITY in completing the Work.

C. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and

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obligations of the parties will be the same as if the termination had been issued for the AUTHORITY's convenience.

D. The rights and remedies of AUTHORITY in this Article are in addition to any other rights and remedies provided by law or under this Contract.

END OF SECTION 00800 - PROSECUTION AND PROGRESS

00900 PAYMENT

00901 PAYMENT PROCEDURES

A. AUTHORITY shall pay to Contractor, at the times and in the manner hereinafter provided, the amount set forth in the Bid Schedule for the Work satisfactorily performed, contingent upon Contractor's satisfactory compliance with the terms and conditions of the Contract. Contractor agrees to accept that amount as full and final payment for all labor, materials, supplies, equipment, overhead, profit, taxes, duties, and charges of whatever nature incurred by Contractor in performing its obligations under the Contract.

B. Unless otherwise specified in the Special Provisions or Contract Specifications, within thirty (30) Days after receipt of AUTHORITY's Notice to Proceed, and prior to submission of Contractor's first invoice, Contractor shall submit to AUTHORITY a supplementary Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as AUTHORITY may require. When accepted by AUTHORITY, that schedule, shall be the basis for determining the amount of each progress payment.

C. Contractor shall submit monthly invoices setting forth the percentage of Work, or units of Work where applicable, completed during the month and the amount due for such Work based upon the supplementary Schedule of Values submitted in accordance with Paragraph B of this Article.

D. Contractor shall not request payment from AUTHORITY of any amount that the Contractor has withheld or retained from Subcontractors or Suppliers until such time that Contractor has determined and certified to AUTHORITY that the Subcontractor is entitled to the payment of such amount.

E. Invoices shall be submitted in triplicate and shall be in accordance with the requirements of Contract Specifications Section 01027 Part 1.04. The invoices shall be accompanied by at least two sets of detailed back-up information. The form and content of invoices are subject to review and approval by AUTHORITY. All of Contractor's invoices shall be sent directly to the attention of the Resident Engineer and shall contain a reference to the Contract Number.

F. AUTHORITY shall pay the approved invoice, less ten (10) % for retainage, except as provided under Article 00903, Reduction of Retainage, within thirty (30) Days after its receipt by AUTHORITY. All

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retainage shall be held by AUTHORITY until sixty (60) Days after the time of Final Completion and AUTHORITY has received consent of surety.

G. Contractor warrants that

- (1) title to all Materials furnished by Contractor or incorporated into the Work by Contractor and covered by the progress payment shall pass to AUTHORITY at the time Contractor receives the progress payment;
- (2) all Materials are free and clear of all liens, claims, security interests, or encumbrances; and
- (3) no Materials have been acquired by Contractor, or by any other person performing Work at the Work Site or furnishing Materials for the Work under this Contract, that are subject to an agreement under which an interest in, or encumbrance on, the Materials or equipment is retained by the seller or otherwise imposed. Notwithstanding the provisions of this Paragraph, the risk of loss of all Materials incorporated in the Work shall remain with Contractor until Final Completion and Final Acceptance by AUTHORITY.

H. No approval for payment, nor any payment, nor any partial or entire use or occupancy of any portion of the Work by AUTHORITY, shall constitute an acceptance of any Work that is not in accordance with the Contract.

00902 RETAINAGE

A. The Contractor may deposit bonds or securities with AUTHORITY or in any bank or trust company to be held in lieu of the cash retainage for the benefit of AUTHORITY. Bonds or securities deposited by Contractor shall comply with the provisions of the contract. If the Contractor elects to deposit bonds or securities in lieu of retainage, AUTHORITY shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the retainage.

00903 REDUCTION OF RETAINAGE

AUTHORITY shall withhold ten (10) % retention until the Contractor successfully achieves Final Completion on the Contract in accordance with the provisions of Article 00901, Payment Procedures. However, after fifty (50) % of the Work under the Contract is completed, the AUTHORITY may, at its sole discretion, elect to reduce or eliminate

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retention on future Contract payments upon written application for reduction by the Contractor, provided progress on the Work is being maintained by the Contractor to the AUTHORITY's satisfaction.

If at any time the AUTHORITY determines satisfactory progress is not being maintained ten (10) % retention shall be reinstated for all progress payments made under the Contract subsequent to the determination until such time as progress is regained satisfactory to the AUTHORITY. The balance of withheld retainage shall be paid sixty (60) Days after Final Completion.

00904 WITHHOLDING OF PAYMENTS BY AUTHORITY

A. AUTHORITY may withhold all or part of a payment to the extent deemed necessary to protect AUTHORITY from loss because of:

- (1) Defective work not remedied;
- (2) Third party claims filed, or evidence reasonably indicating that a third party claim will be filed;
- (3) Failure of Contractor to make payments properly to Subcontractors, or for labor, Materials, or equipment;
- (4) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract price;
- (5) Damage to AUTHORITY or another contractor;
- (6) Contractor's failure to carry out the Work in accordance with the Contract;
- (7) Contractor's failure to comply with any material provision or requirement of the Contract;
- (8) Contractor's failure to pay the deductible portion of any insured claim filed by third parties against the Contractor.
- (9) Contractor's failure to provide the required progress schedules and record drawings in accordance with the Contract;
- (10) Any sums expended by AUTHORITY in performing any of the Work under the Contract which the Contractor has failed to perform; or
- (11) Liquidated damages.

00905 PROGRESS PAYMENTS TO SUBCONTRACTORS

A. The Contractor shall comply with the provisions of the contract to Contractor's relations with Subcontractors.

B. Contractor shall include in each Subcontract for property or services entered into by the Contractor and a Subcontractor, including a material supplier, for purposes of performing the Work under this Contract:

(1) A payment clause that obligates Contractor to pay the Subcontractor for satisfactory performance under its Subcontract within seven (7) Days out of such amounts as are paid to the Contractor by AUTHORITY under this Contract; and

(2) An interest penalty clause that obligates Contractor to pay to the Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with subparagraph B. (1) of this Article, as follows:

(a) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(b) Computed at the rate specified in Article 00906.

(3) A clause requiring all Subcontractors to include both a payment clause and an interest penalty clause conforming to the standards of subparagraphs 2(a) and (b) of this Article in each of their Subcontracts and to require each of its Subcontractors to include such clauses in their Subcontracts with lower tier Subcontractors and Suppliers.

C. A dispute between the Contractor and a Subcontractor relating to the amount or entitlement of a Subcontractor to a payment or a late payment interest penalty under a clause included in a Subcontract pursuant to Paragraph B of this Article does not constitute a dispute to which AUTHORITY is a party. AUTHORITY shall not be included as a party in any such administrative or judicial proceeding involving such a dispute.

D. The Contractor's obligation to pay a late payment interest penalty to a Subcontractor under a clause included in a Subcontract pursuant to Paragraph B of this Article shall not be an obligation of AUTHORITY for such late payment interest penalty. A cost reimbursement claim shall not include any amount for reimbursement of such late payment interest penalty.

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E. If Contractor withholds or retains payment from a Subcontractor, Contractor shall furnish AUTHORITY with a copy of the notice given to the Subcontractor or Supplier specifying:

- (1) The amount to be withheld;
- (2) The specific causes for the withholding under the terms of the Subcontract; and
- (3) The remedial actions to be taken by the Subcontractor or Supplier in order to receive payment of the amounts withheld.

F. If Contractor has made application for payment to AUTHORITY and Subsequently withholds or retains payments from a Subcontractor, Contractor shall be obligated to pay interest to AUTHORITY in accordance with the provisions of Article 00906.

G. AUTHORITY may, upon request and at its discretion, furnish to any Subcontractor information regarding the percentages of completion or the amounts applied for by Contractor and the action taken on the application by AUTHORITY on account of Work done by the Subcontractor.

00906 INTEREST ON OVERDUE PAYMENTS

A. Interest shall be paid automatically when payments become overdue. Except as set forth in Article 00904, Withholding of Payments by AUTHORITY, payments are due thirty (30) Days following receipt of an invoice from Contractor or fifteen (15) Days following approval of an invoice by AUTHORITY, whichever is the earlier date. Interest will accrue at the rate, determined by the AUTHORITY, on the progress payment, not including retainage, due the Contractor. Interest payments shall accompany the net amount due Contractor on the invoice. Contractor is not required to petition, invoice, bill or wait additional days to receive interest due.

00907 PAYMENT FOR MOBILIZATION, PREPARATORY AND DEMOBILIZATION WORK

If the Bid Schedule for this Contract contains a pay item for mobilization, preparatory and demobilization work, payment for this pay item will be made at the lump sum price stated in the Bid Schedule and in accordance with the terms of payment for that pay item. If payment terms are not specifically provided for this pay item, progress payments for mobilization, preparatory and demobilization work will be made as follows:

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- A. When five (5) percent of the total original Contract amount is earned from other pay items, exclusive of payments made in accordance with Article 00908, Payment for Materials Prior to Installation, fifty (50) percent of the pay item for mobilization and preparatory work may be invoiced for payment.
- B. When ten (10) percent of the total original Contract amount is earned from other pay items, exclusive of payments made in accordance with Article 00908, Payment for Materials Prior to Installation, the balance of the pay item for mobilization and preparatory work may be invoiced for payment.
- C. Mobilization costs shall not exceed ten percent (10%) of the Contract price or the amount established by the Contract.

00908 PAYMENT FOR MATERIALS PRIOR TO INSTALLATION

AUTHORITY may, at its discretion, authorize payment for Materials not yet incorporated into the Work, whether or not delivered to the Work Site, subject to the following conditions:

- A. In accordance with Article 00901B of Payment Procedures, as part of the supplementary Schedule of Values, Contractor shall submit to AUTHORITY a list of all Materials for which Contractor will request payment under this Article. AUTHORITY will review the list and notify the Contractor in writing of those items for which payment under this Article will be authorized. AUTHORITY will not authorize prepayment of undeliverable materials.
- B. Material must be delivered to the Work Site, or delivered to Contractor, and promptly stored by Contractor in a warehouse, storage yard, or similar suitable place within ten (10) miles of the Work Site, or a greater distance approved by AUTHORITY. AUTHORITY shall at all times have access to such Materials and storage locations.

If the Materials are stored off the Work Site, the Contractor shall provide documentation of AUTHORITY's right of access to the Materials in a form satisfactory to AUTHORITY. Before any payment is made for the Material, Contractor shall furnish to AUTHORITY evidence of ownership and properly executed bills of sale warranting that the Materials are free from all liens, security interests, and other encumbrances.
- C. Contractor shall ensure the security of the Materials, shall be strictly liable to AUTHORITY for any damage to them, and shall replace damaged Materials without cost to AUTHORITY.

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00909 PAYMENT FOR CHANGES

A. Subject to Section 00406, Changes in the Work, if any post-award change in this Contract results in a change in the quantity of Work from that specified in the Contract, the change in Contract compensation shall be paid in accordance with the Change Order.

B. In the event that a change compensation is not determined by lump sum, unit pricing or by agreement as set forth in this Article, the change in compensation shall be determined according to Article 00910, Cost Reimbursable (Time and Materials) Work. In any event, the terms of Article 00910 shall be complied with in relation to markups and their application.

C. Nothing in this Article shall be deemed to require a change in Contract compensation when additional, extra, or changed work is the result of an estimating, contracting or engineering error by Contractor.

D. In no event shall Contractor be entitled to compensation for loss of anticipated profits or for consequential damages, resulting from changes made in accordance with Article 00406, Changes in the Work.

00910 COST REIMBURSABLE (TIME AND MATERIALS) WORK

When work on changes is ordered by AUTHORITY to be performed on a cost reimbursable basis, work so performed and accepted shall be paid for in the following manner:

A. Direct Labor

(1) For all labor directly engaged in the specific change, Contractor shall receive the prevailing wages paid on the Project for each hour that the labor is actually engaged in work.

(2) The Contractor shall be reimbursed for the actual cost of the accident and unemployment compensation premiums, the actual cost of any health, welfare, pension, or collective bargaining agreement benefits paid, computed on the base rate for the class of work involved for the actual amount of the payroll.

(3) No overtime premium will be paid, unless prior authorization has been given by AUTHORITY, and then only the premium portion of the overtime will be paid, with no additional benefits or overhead.

B. Materials For all Materials approved by AUTHORITY prior to placement of any order and used in the specific Work, Contractor shall receive the actual cost

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of Materials, including freight charges, as shown by the original receipted bills for Materials and freight, less any discount allowed by the Supplier.

C. Contractor Owned or Leased Equipment Payment for the use and operation of equipment owned or leased by Contractor shall be made if required in the performance of the change. Such charges shall not include charges for any item of equipment or tool with a new cost of five hundred dollars (\$500.00) or less each.

For equipment owned or leased by the Contractor, the use and operation rates shall be as set forth in the latest edition of the Rental Rate Blue Book for Construction Equipment (Blue Book), published by Dataquest, Inc., San Jose, CA, which is in effect at the time of commencement of the changed work. Those rates shall be applied as follows:

(1) Rental for the equipment shall be computed and charged as follows. The monthly base rate for the equipment shall be multiplied by the rate adjustment factor and the resulting product divided by one hundred seventy-six (176) hours/month to yield the hourly rental rate.

$$\text{Hourly Rental Rate} = \frac{\text{Monthly Rental Rate} \times \text{Rate Adjustment Factor}}{176 \text{ Hours/Month}}$$

The hourly rental rate for the equipment is multiplied times the actual number of hours the equipment is used in the conduct of the changed work.

(2) The application of weekly, daily, or hourly rates as set forth in the Blue Book is hereby excluded.

(3) The application of regional adjustment factors is hereby excluded.

(4) Normal working conditions will be assumed unless otherwise approved by AUTHORITY.

(5) Use of the equipment for second or third shifts shall be at fifty (50) percent of the first shift rate established in (1) above.

(6) Unless otherwise agreed, the costs of fuel, lubricants, tires and other expendables, repair parts, service and maintenance shall be charged at the Estimated Operating Cost/Hr. set forth in the Blue Book.

(7) Operators will be paid for as direct labor under Paragraph A. (1) above.

(8) Transportation costs to and from the Work Site for equipment shipped in specifically to perform changed work, if approved in advance by

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AUTHORITY, will be paid separately. No payment for transportation costs will be made if the equipment brought to the Work Site for changed work is also used on Work items.

(9) Equipment standby time, if approved by AUTHORITY, will be paid for at forty percent (40%) of the applicable rental rate.

(10) If a rate is not published in the Blue Book, the Contractor shall furnish appropriate cost information to AUTHORITY to allow calculation of an appropriate rate following the principles established in the Blue Book.

(11) All equipment rates as set forth above shall be established in writing before commencing any changed work.

D. Outside Rental Equipment If Contractor owned or leased equipment is not available and equipment is rented from an outside source, payment will be made on the basis of actual invoiced cost, less any discount allowed by the renting source. Use of outside rental equipment at rates higher than the applicable Blue Book rate, as computed above, will not be allowed unless approved in writing in advance by AUTHORITY.

E. Sub-contract and Outside Special Services

(1) If AUTHORITY and Contractor agree that a certain item of work or service under cost-reimbursable work cannot be adequately performed by Contractor's forces, such work or service may be performed by a Subcontractor or outside specialist. Where the cost reimbursable work necessitates fabrication or machining work by Contractor away from the Work Site, charges for such work may, by prior written agreement between AUTHORITY and Contractor, be accepted as a special billing. Costs for work performed by Subcontractors shall be computed in the same way as if the Work was done by the Contractor.

F. Markups-Percentage Allowances

(1) Contractor will be permitted to apply overhead and profit markups, not exceeding the percentages stated herein, to its increased cost resulting from any change in the Work ordered by AUTHORITY. Markups allowable at the tier of the entity performing the Work with its own forces, whether the Contractor or a Subcontractor at any tier, shall not exceed fifteen percent (15 %) of the total direct cost of the Work, for overhead, plus ten percent (10 %) of total direct cost marked up for overhead as above, for profit.

Markup allowable at any tier to cover overhead and profit on work performed by a Subcontractor at any lower tier shall not exceed five

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percent (5%) of the total value of the Work including all applicable markups at the next lowest tier; provided however that the total value of markup at all tiers, including Contractor level, shall not exceed forty percent (40%) of the total direct cost of the work.

The apportionment and distribution of markup between Contractor and Subcontractors shall be the sole prerogative and responsibility of the Contractor. The following markup calculations illustrate the operation of this Article, and define the maximum allowable total markup percentage on direct cost at various tiers:

(a) For work performed by the Contractor, total markup percent is $[1.15 \times 1.10] - 1.00 = 0.265$, or 26.5%

(b) For work performed by a first-tier Subcontractor, total markup percentage is: $[1.15 \times 1.10 \times 1.05] - 1.00 = 0.329$, or 32.9%.

(c) For work performed by a second-tier Subcontractor, total markup percentage is: $[1.15 \times 1.10 \times 1.05 \times 1.05] - 1.00 = 0.395$, or 39.5%

(d) For work performed by a third- or lower-tier Subcontractor, total markup percentage shall not exceed 40.0%.

(2) The percentage allowances made to the Contractor in accordance with the terms outlined above constitute full compensation for all overhead and profit, and for all other work, services and costs not specifically designated in this Article and/or elsewhere in the Contract Documents as items for which payment is to be made.

For the purposes of Changes, "overhead", "profit", and "direct cost" are defined as follows:

(a) "Overhead" The term overhead means all costs not specifically allocable to the specific change. It does not include profit. Direct costs specifically allocable to the specific change, defined in this General Provision as Direct Labor, Materials, Contractor Owned or Leased Equipment, Outside Rental Equipment and Sub-contract and Outside Special Services, are not part of overhead. Overhead shall include, without limitation, the following costs:

(i) All costs not specifically designated by the Contract for payment and not required by the Contract to be included in pay items;

(ii) The cost of all labor and labor-related costs, such as salaries, wages, burden, taxes, insurances, benefits and bonuses for the following classes of employees, however

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described or classified by the Contractor: All supervisory and managerial employees above foreman level, whether or not directly engaged in the specific change, all professional, technical and administrative employees including field and office engineering, scheduling, survey, estimating, purchasing, expediting, drafting, accounting, administration, clerical and secretarial;

(iii) All costs of ownership, rental, leasing, operation and maintenance of: Field offices and equipment; equipment and facilities for telecommunications, data transfer, computing, survey; office furniture, equipment and supplies; utilities; automobiles and pickup trucks unless used primarily for transportation of materials and supplies for the specific change; items of equipment and small tools costing \$500.00 or less per item.

(iv) Expendable supplies and materials not incorporated in the Work.

(v) Safety equipment.

(vi) Temporary construction.

(vii) Transportation of Materials, the cost of which is not identifiable to specific delivery or is included in the material invoice.

(viii) Employee parking.

(ix) Insurance premiums not payable under A.(2) above; performance bond and labor and material payment bond premiums.

(x) Permit fees not specified to be reimbursed by AUTHORITY.

(xi) Other field office overhead costs.

(b) "Profit" The term profit shall mean that portion of the Contractor's Bid, proposal price or unit price that is not Direct Cost or Overhead. Home and Branch Office costs shall not be part of overhead. Such costs shall be deemed to: be part of the Contractor's profit; be the share of home and branch office costs allocable to the Contract; and include without limitation the following: Management costs; marketing costs; general and

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administrative expenses; administration, clerical secretarial, accounting and payroll services; financing costs; and other home and branch office expenses.

(c) "Direct Cost" shall mean those costs defined in Sub-articles A., B., C., D. and E. of this Article which are directly related to the specific change.

G. Cost Reimbursable Invoices:

- (1) Time charged to cost reimbursable work shall be submitted daily to AUTHORITY for approval. Such time sheets shall be submitted in duplicate by noon of the work day following the day on which the work was performed. One copy will be returned to Contractor; the other will be retained by AUTHORITY. Evidence of AUTHORITY's approval of time sheets shall be submitted by Contractor with its invoice.
- (2) Invoices for cost reimbursable work shall show in payroll form the dates, names, hours worked each day, rates of pay, and amounts paid for each individual employed on such work, and must give in detail the nature of the work performed by each employee.
- (3) Invoices for Materials must be fully itemized showing dates of delivery, quantities, unit prices, amounts, freight and discounts, and must be accompanied by vendor invoices covering each item.
- (4) Invoices for equipment rental must be fully itemized showing a complete description including size and capacity of equipment, the number of hours operated each day, the rental rates and amounts for each individual piece of equipment used on such work, and any discount allowed.
- (5) Invoices for cost reimbursable work shall be prepared and submitted in accordance with Article 00901, Payment Procedures. All invoices, payrolls, and other forms of requests for payment of cost reimbursable work shall be submitted in triplicate, with the progress payment request. Payment request shall state the Contract number and the cost reimbursable work order or change order number under which the work was performed.
- (6) Failure to present requests in proper form within sixty (60) Days after the close of the month in which the cost reimbursable work was performed shall constitute a waiver by Contractor of its right to present such claim thereafter or to receive payment therefore.

00911 FINAL COMPLETION, FINAL ACCEPTANCE AND FINAL PAYMENT

A. Whenever the Contractor deems its obligations under the Contract have been fulfilled, the Contractor shall notify AUTHORITY in writing. Upon receipt of Contractor's notice of Final Completion, AUTHORITY shall inspect the Work and within fifteen (15) Days after receiving Contractor's notice of Final Completion either finally accept the Work or notify the Contractor in writing of Work yet to be performed on the Contract.

Upon receipt of AUTHORITY's written Final Acceptance of the Work, Contractor shall invoice AUTHORITY for any amounts due under the Contract including retainage. AUTHORITY shall pay Contractor within thirty (30) Days after receipt of the approved final invoice.

B. Neither the final payment nor any remaining retainage shall become due until Contractor submits to AUTHORITY

- (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, using AIA Form G706
- (b) consent of surety, if any, to final payment, and
- (c) if required by AUTHORITY, other data establishing payment or satisfaction of all obligations, such as receipts, releases, and waivers of liens arising out of the Contract, using AIA Form G706A, or other format to the extent and in the form designated by AUTHORITY.

C. If, after Substantial Completion of the entire Contract, Final Completion is materially delayed through no fault of Contractor or by the issuance of Change Orders affecting final completion, AUTHORITY, without terminating the Contract, shall pay the balance due for that portion of the Work that is eligible for Final Completion. If the remaining balance of Work is less than the retainage stipulated in the Contract, and if bonds have been furnished as provided in the Contract, the written consent of the surety to the payment of the balance due for that portion of the Work eligible for Final Completion shall be submitted by Contractor prior to payment.

Payment under this Article shall be made under the terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims.

D. No arbitration or court proceeding may be commenced by the Contractor later than ninety (90) Days following the issuance of Final Acceptance by the AUTHORITY.

E. The making of final payment by AUTHORITY shall constitute a waiver of claims by AUTHORITY except those arising from:

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(1) liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;

(2) latent defects in the Work or failure of the Work to comply with the requirements of the Contract; or

(3) terms of all warranties required by the Contract.

F. Acceptance of final payment by the Contractor, a Subcontractor, or a Supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of application for final payment. Such waivers shall be in addition to the waiver provided in this Article.

00912 AUDIT AND INSPECTION OF RECORDS

A. Contractor shall maintain a complete set of records relating to this Contract in accordance with generally accepted accounting procedures. Contractor shall permit the authorized representatives of AUTHORITY, the U.S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Contractor relating to its performance under this Contract until the expiration of three (3) years after final payment under this Contract.

B. Contractor further agrees to include in all of its Subcontracts under this Contract a provision to the effect that the Subcontractor agrees that AUTHORITY, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the Subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Subcontractor.

The term 'Subcontract' as used in this Article excludes

(1) purchase orders not exceeding \$10,000.00 and

(2) Subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

C. The periods of access and examination described in subparagraphs A and B of this Article for records that relate to

(1) disputes between AUTHORITY and Contractor,

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(2) litigation or settlement of claims arising out of the performance of this Contract, or

(3) costs and expenses of this Contract as to which exception has been taken by the Comptroller General or its duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

00913 FEDERAL FUNDING LIMITATION

Contractor understands that funds to pay for Contractor's performance under this Contract are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by FTA. AUTHORITY's obligation hereunder is payable from funds that are appropriated and allocated by FTA for the performance of this Contract. If funds are not allocated, or ultimately are disapproved by FTA, AUTHORITY may terminate or suspend Contractor's services without penalty. AUTHORITY shall notify Contractor promptly in writing of the non-allocation, delay, or disapproval of funding.

END OF SECTION 00900 – PAYMENT