

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

**GENERAL CONDITIONS
FOR PROCUREMENT CONTRACTS
DECEMBER 2006**

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GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

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GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

ARTICLE P1

ABBREVIATIONS, DEFINITIONS, AND GENERAL TERMS

P1.1 General. Wherever in the Contract Documents the following abbreviations, acronyms, and terms, or pronouns in place of them, are specified starting with a capital letter, they shall in each case be understood to mean the full description, as follows:

P1.2 Abbreviations.

BART	The San Francisco Bay Area Rapid Transit District
CAL/OSHA	State Occupational Safety and Health Act (Agency)
DOT	United States Department of Transportation
DFE	District-Furnished Equipment
DFM	District-Furnished Material
DMP	Designated Matching Product
FAR	Federal Acquisition Regulation (Title 48 Code of Federal Regulations)
OMB	Federal Office of Management and Budget
OSHA	Federal Occupational Safety and Health Act (Agency)
PUC	Public Utilities Commission of the State of California
VECP	Value Engineering Change Proposal

P1.3 Definitions.

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

Approved Final Invoice. Supplier's final invoice for the Work as approved by the District and described in Article P9.7.

Award. The acceptance by the District of a Bid or Proposal.

BART System. The San Francisco Bay Area Rapid Transit P-1
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System, consisting of all real or personal property, including right-of-way, tracks, structures, equipment and appurtenances, owned or controlled by the District.

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

Bid or Proposal Documents. The Contract Book and Addenda issued by the District which, when executed, comprise the Contract Documents.

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

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

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

Bid or Proposal Schedule. That part of the Bid or Proposal Form, which contains a list of Bid or Proposal Items for which a Bidder or Proposer quotes its prices.

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

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

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

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Change. Any alteration of the Contract reflecting modification of the Work.

Change Notice. A written notice issued to the Supplier by the District's Representative specifying a proposed Change. Unless otherwise expressly stated in the Change Notice, a Change Notice is a request for Supplier's proposal which may result in a Change Order.

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

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

Contract. The written agreement executed by the District and the Supplier covering the performance of the Work, which incorporates by express reference the Contract Documents.

Contract Book. The Invitation to Bid or Request for Proposal, Instructions to Bidders or Instructions to Proposers, General Conditions, Supplementary Conditions, Contract Specifications, Contract Drawings, forms for Designation of Subsuppliers, Bidder's or Proposer's Bond, Bid or Proposal Form, Contract, and additional documents incorporated by express reference into the Contract Book.

Contract Documents. The Contract Book, Addenda, executed Contract, Contract Bonds, Change Orders, and additional documents incorporated by express reference into the Contract Documents.

Contract Drawings. The required layout and details of the item(s) to be procured, listed or referenced in the Contract Documents or amendments thereto, which show the locations, character, dimensions, and details of the item(s) to be procured.

Contract Price. The Contract Price is the Bid or Proposal Price as agreed to in the Contract, and adjustments incorporated by Change Order, payable by the District to the Supplier for the performance of the Work.

Contract Specifications. The specifications prepared by or for the District for the Contract that are included in the Contract Book.

Cost Principles. The principles and standards for determining the allowability, allocability, and reasonableness of costs that are reimbursed, claimed, or negotiated. The Cost Principles applicable to the organization incurring or proposing the cost are as follows:

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

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

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

Days. Unless otherwise designated, the term "Days" means calendar days.

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

Directed. Directed by the District's Representative.

District. The San Francisco Bay Area Rapid Transit District.

District-Furnished Equipment or Materials. Equipment or materials furnished by the District for installation or use by the Supplier.

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

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

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

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

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

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

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

Notice of Completion. The formal, written notice issued by the District when all of the Work under the Contract has been completed as provided in Article P8.1.1.

Notice of Potential Claim. A written notice from the Supplier to the District submitted in accordance with Article P9.6 informing the District of a potential claim against the District.

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

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

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

Procurement. The Work described in the Contract Documents to be furnished in accordance with the Contract.

Proposal. See "Bid or Proposal".

Proposed Final Invoice. Supplier's final invoice proposed for the Work as described in Article P9.7.

Proposer. See "Bidder or Proposer".

Record Documents. All Contract Documents, Record Drawings, design calculations, warranties, certificates, operations and maintenance manuals, training manuals, software, software documentation, data, and other Submittals which are required by the Contract to be delivered to the District which reflect the performance of the Work as actually completed under the Contract.

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

Referenced Standards. Industry standards, referenced in the Contract Documents, such as standard specifications, codes, practices, and the requirements for materials, equipment, work quality, manufacture, installation, inspection, and test, which are published and issued by organizations, societies, and associations.

State. The State of California.

Subcontract. Any contract between the Supplier and a Subsupplier, or between Subsuppliers of any tier, to perform a portion of the Work.

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

Subsupplier. Any person or persons, firm, partnership, joint venture, corporation, or combination thereof, or other entity which contracts with Supplier or Subsupplier of any tier to perform work, labor, or to render service on or about the Work.

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

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

Supplier's Representative. An individual designated in writing by the Supplier who, upon approval by the District's Representative, shall have complete authority to represent and to act for the Supplier and shall assume responsibility for performance of the Work.

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Unit Price Work. Work to be paid for on the basis of unit prices.

Value Engineering Change Proposal. A proposal originated, initiated, and developed by the Supplier that proposes a credit Change to the Contract, a portion of which credit shall be retained by the Supplier as described in Article P4.6. A VECP shall not alter the essential functions and characteristics of the Work.

Work. All performance required under the Contract as specified, shown, or indicated in the Contract Documents, including all alterations, amendments, or extensions thereto made by Change Orders as specified in Article P4.4.

P1.4 References to Articles. References to Articles include all subarticles and sub-subarticles under the Article referenced (for example, a reference to Article P9.6 is also a reference to P9.6.1 through P9.6.4), and references to subarticles similarly include references to sub-subarticles.

P1.5 Use of Referenced Standards. In case of a conflict between the Contract Specifications and any Referenced Standards, the Contract Specifications shall govern. Unless otherwise specified, Referenced Standards apply only to material, workmanship, and procedure. Commercial terms and legal responsibilities are not intended to be included in the reference. All material, equipment, and workmanship, specified by the number, symbol, or title of a Referenced Standard shall comply with the latest edition or revision thereof and all amendments and supplements thereto in effect on the date of the Invitation to Bid or Request for Proposal, except where a particular edition or revision thereof is indicated in the reference.

P1.6 Headings, Index, and Table of Contents. The headings to the individual Articles of the General Conditions, as well as the Index and Table of Contents, are for convenience of reference only, and shall not affect the construction or interpretation of any provisions of the General Conditions.

GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

ARTICLE P2

BONDS AND INSURANCE

P2.1 Performance Bond. Concurrently with execution of the Contract in accordance with Article P3.1, the Supplier shall furnish a Performance Bond in amount not less than 100 percent of the Contract Price. The Performance Bond shall be on forms provided by the District and shall be executed as surety by a corporation or corporations authorized to issue surety bonds in the State and acceptable to the District. For Contracts of less than One Million Dollars, the Performance Bond may be executed as surety by Treasury Listed Surety Companies acceptable to the District. Treasury Listed Surety Company shall be defined as follows:

A bonding company holding a valid certificate of authority issued by the United States Secretary of Treasury authorizing said company to do business with the United States as surety on, or reinsurer of, recognizances, stipulations, bonds and undertakings, under the provisions of the Act of July 30, 1947 (61 Stats. 646, as amended: 31 USC Sections 9304-9308).

P2.1.1 Surety Notice and Consent Not Required. Any Change to the Contract may be made without giving notice to or securing the consent of the surety or sureties on the Performance Bond.

P2.1.2 Term of Performance Bond. Upon receipt of the Notice of Completion, the Supplier may reduce the amount of the Performance Bond to 10 percent of the total amount of the Contract Price and this amount shall continue in full force and effect for the guaranty period specified in Article P4.7.

P2.2 Insurance. The District's insurance requirements applicable to the Work are specified in the Supplementary Conditions.

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ARTICLE P3

EXECUTION OF CONTRACT

P3.1 Execution. Within ten Days of the receipt of a Notice of Award, unless the District in its discretion allows additional time in writing for such submissions, the Supplier shall deliver the Performance Bond and the specified certificates of insurance to the District and shall properly execute three copies of the Contract at the offices of the District.

P3.2 Failure to Execute Contract. Failure of a Bidder or Proposer to whom the Contract is awarded to execute the Contract or to deliver an acceptable Performance Bond and certificates of insurance as specified herein, shall be just cause for the annulment of the Award and the forfeiture of the Bidder's or Proposer's Security.

P3.3 Supplier's Review of Contract and Work Conditions. By bidding or proposing for the Work and by executing the Contract, the Supplier certifies that it has carefully reviewed, has had clarified, and understands, all of the Bid or Proposal Documents, has inspected the locations not under the Supplier's control related to performance of the Work, and is satisfied as to its ability and intention to conduct and complete the Work required in the Bid or Proposal Documents on the terms and conditions stated in the Contract. In particular, the Supplier certifies that it has reviewed the requirements for the format and detail of records to be maintained at all times during the performance of the Work, and that it has instituted or will implement the preparation and maintenance of such records. In particular, the Supplier represents as follows:

- (a) It is familiar with and is satisfied as to all Federal, State, and local laws and regulations that may affect the cost, progress, performance and furnishing of the Work;
- (b) It is aware of the general nature of any work to be performed by the District that relates to the Work as indicated in the Bid or Proposal Documents;
- (c) It has correlated the information known to Supplier and information and observations obtained from visits to the locations not under the Supplier's control related to performance of the Work, reports, and drawings identified in the Bid or Proposal Documents; and

- (d) It has given the District written notice of all conflicts, errors, ambiguities, or discrepancies that Supplier has discovered in the Bid or Proposal Documents and the written resolution thereof is acceptable to Supplier and that the Bid or Proposal Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of the Work.

P3.3.1 Access. The Supplier shall investigate and bear the risk of the conditions of existing public and private roads and of clearances, restrictions, bridge load limits, and other limitations affecting transportation to and from, as well as ingress and egress at the delivery site(s). The unavailability of transportation facilities or limitations thereon shall not become a basis for claims for damages or extension of time for completion of the Work.

P3.3.2 Haul Routes. The Supplier shall assume full responsibility for determining the haul routes to be utilized and confirming that the jurisdiction through which its haul routes pass will permit the hauling operations with respect to laden weights, type of vehicle, frequency and dimensions of loads, required traffic control, and hours of operation. All necessary permits, licenses, or bonds shall be obtained and paid for by the Supplier. The unavailability of haul routes or limitations thereon shall not become a basis for claims for damages or extension of time for completion of the Work. The Supplier shall be responsible for any repair of haul routes required as a result of the Work.

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ARTICLE P4

SCOPE OF WORK

P4.1 Intent of Contract Documents. The intent of the Contract Documents is to describe a functionally complete Work to be performed in accordance with the Contract Documents. Any work, materials, or equipment that may reasonably be inferred from the provisions of the Contract Documents, or from prevailing custom or trade usage, as being required to produce the intended result will be performed, designed, and furnished by the Supplier whether or not specifically called for. Where the Contract Drawings or Contract Specifications describe portions of the Work in general terms, but not in complete detail, the highest quality work practices shall be followed and only materials and workmanship of best quality shall be used. All equipment or material to be provided by the Supplier shall be newly manufactured products. Unless otherwise specified, the Supplier shall furnish all design, labor, materials, tools, equipment, and incidentals which are necessary to complete the Work in accordance with the Contract Documents.

P4.2 Delivery. Unless otherwise Indicated, delivery shall be aboard carrier at the site or sites Indicated.

P4.3 Unloading. Unless otherwise Indicated, the Supplier shall unload at the site or sites Indicated at Supplier's expense.

P4.4 Changes. The District reserves the right to make Changes to the Contract and to require such Changes in the extent or manner of performance of the Work as are determined by the District to be necessary. Work not covered by any of the items for which there are unit prices or lump sum price or by any combination of such items, as determined by the District's Representative, and work specifically designated as extra work in the Contract Documents, is extra work. The Supplier shall perform such extra work upon receipt of a Change Order therefor or a Change Notice issued pursuant to Article P4.4.1.1. When so ordered by such Change Order or Change Notice, work will be priced in accordance with the provisions of Article P9.2.

P4.4.1 Change Notices. Each proposed Change to the Contract will be described in a Change Notice issued by the District, which will indicate either:

- (a) The proposed Change involves no change in Contract time of performance and either no change in the Contract Price or only items for which there are changes in quantities at Contract unit prices, or

- (b) The proposed Change will require that the Supplier submit a proposal within the time specified.

P4.4.1.1 Change Notice Work. If so ordered in a Change Notice, the Supplier shall promptly proceed with the work described in the Change Notice as directed, even if the Supplier and the District have not yet agreed on any compensation or schedule adjustment for such work. Where the compensation for changed work which will subsequently be covered by a Change Order cannot initially be determined or has not been negotiated, the District's Representative may require the Supplier to perform all or any portion of such changed work prior to agreement on an equitable adjustment for said work with the portion of such changed work performed prior to such agreement on equitable adjustment to be recorded in accordance with the provisions of Article P9.2.

P4.4.2 Supplier's Response.

- (a) **Supplier Agreement with Change Notice under Article P4.4.1 (a).** If the Supplier agrees with the terms and conditions of a Change Notice under Article P4.4.1 (a), the Supplier shall sign the Change Notice and return it to the District's Representative within 14 Days after receipt of the Change Notice. A Change Order will be issued and the Supplier shall promptly proceed with the work as indicated therein. If the Supplier disagrees with the terms and conditions of the Change Notice, the Supplier shall follow the protest procedures set forth in Article P4.4.2 (d). If the Supplier fails to follow the protest procedures set forth in Article P4.4.2 (d), a Change Order will be issued based on the District's good faith estimate and the Supplier shall not be entitled to any claim for additional compensation or schedule extension for the Change other than that specified in the Change Notice.
- (b) **Supplier Agreement with Change Notice under Article P4.4.1 (b).** If the Supplier agrees with the terms and conditions of a Change Notice under Article P4.4.1 (b), the Supplier shall sign the Change Notice and submit it to the District's Representative within 14 Days after receipt of the Change Notice. If the Supplier disagrees with the terms and conditions of the Change Notice, the Supplier shall follow the protest procedures set forth in Article P4.4.2 (d). If the Supplier fails to follow the protest procedures set forth in Article P4.4.2 (d) the Supplier will be deemed to have consented to the terms and conditions set

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forth in the Change Notice. Thereafter, the District may, at its discretion: (1) Revise the Change Notice; (2) Cancel the Change Notice; (3) Issue a Change Order to which the Supplier will be deemed to have consented based on the District's good faith estimate of the cost; or (4) Issue a Change Order that directs that the work be performed in accordance with the provisions of Article P9.2.

(c) **Supplier's Change Proposal.**

- (1) The Supplier shall submit its Change Proposal for providing changed work within 14 Days after receipt of a Change Notice under Article P4.4.1 (b), unless specified otherwise in the Change Notice.
- (2) The Supplier may request in writing an extension of time to submit its Change Proposal. Such request shall include the reasons that the Change Proposal cannot be submitted within 14 Days, or within the time specified in the Change Notice, and the amount of additional time requested to submit its Change Proposal. The District may grant such an extension in writing at its sole discretion.
- (3) If the Supplier fails to submit its Change Proposal within 14 Days after receipt of a Change Notice, or within the time specified in the Change Notice, or within the time extension granted by the District under this Article P4.4.2(c), the District may, at its sole discretion, issue a Change Order on the basis of its good faith estimate of the additional cost and time to be incurred due to the proposed Change, and shall direct the Supplier to promptly proceed with the work as indicated in the Change Order.
- (4) The Supplier's Change Proposal shall contain a detailed cost breakdown and any requested adjustment in Contract time for completion of the Work as follows:
 - (i) The cost breakdown of the Change Proposal shall be consistent with the provisions of Article P9.2. The Supplier shall submit detailed cost breakdowns as described above for any Subsupplier performing work under the Change. Upon request by the District's Representative, the Supplier shall provide further detail and breakdown of cost elements included in the Supplier's or any Subsupplier's Change Proposal, including all supporting documentation. The Supplier shall further provide details about the effect

of the Change on the Contract time for completion. The Proposal shall specify any indirect costs added to the direct costs. The requested information will be used by the District's Representative to aid in evaluating the Supplier's Change Proposal. The Supplier shall include in its Change Proposal compensation and time due to the impacts, if any, of multiple Change Orders related to the work described in the Change Notice. The Supplier shall not submit with respect to such multiple Change Orders, any claim for additional compensation or time due to the cumulative impact of such multiple Change Orders after execution of those Change Orders. The costs shall be the net of added and deleted costs determined in conformance with the provisions of Article P9.2.

- (ii) Any requested adjustment in Contract time for completion of the Work shall be in accordance with the requirements of Article P8.2.2.

- (d) **Change Notice Protests.** If the Supplier disagrees with any terms or conditions set forth in a Change Notice, Supplier shall sign the Change Notice, indicate "protested" adjacent to Supplier's signature, and shall return the signed Change Notice to the District's Representative within 14 Days after receipt of such Change Notice along with a written protest. The protest shall state the points of disagreement, include any Contract Document references, and shall propose a modification of the items. The Supplier shall submit to the District's Representative information in sufficient detail that, in the District Representative's judgment, is sufficient to enable the District to analyze the merits of the Supplier's protest. The District's Representative will consider the Supplier's protest and if it deems the protest valid will: (1) issue a revised Change Notice; (2) cancel the Change Notice; or (3) issue a Change Order reflecting the protest based on the provisions of Article P4.4.4. If the District does not agree with the Supplier's protest, the District in its discretion will: (1) revise the Change Notice; (2) cancel the Change Notice; (3) issue a Change Order based on its good faith estimate incorporating the terms and conditions of the Change Notice; or (4) issue a Change Order that directs that the Work be performed in accordance with the provisions of Article P9.2. If Supplier disagrees with the terms and conditions of the Change Order, Supplier shall follow the Change Order protest procedures in Article P4.4.5.

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P4.4.3 Adjustment in Contract Price. An increase or decrease in the Contract Price will be determined in one of the following ways:

- (a) **Unit Price Quantity Adjustment.** Where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities involved in the changed work.
- (b) **Negotiated Adjustment.** The value of work covered by a Change Order may be negotiated by the District's Representative and the Supplier in any of the following ways to determine an equitable adjustment of the Contract Price:
 - (1) By establishment of new unit prices and related quantities for the changed work where unit prices are not contained in the Contract Documents;
 - (2) By a combination of existing and new unit prices and related quantities for the changed work; or
 - (3) By mutual acceptance of a lump sum.
- (c) **Non-negotiated Adjustment.** Where the District's Representative and the Supplier cannot negotiate an adjustment of the Contract Price, or the District's Representative and Supplier do not agree on pricing for a portion of the work covered by a Change Notice, the District may at its discretion: (1) revise the Change Notice; (2) cancel the Change Notice; (3) issue a Change Order based on its good faith estimate of the cost; or (4) issue a Change Order that directs that the work be performed in accordance with the provisions of Article P9.2.

P4.4.4 Change Orders. The District will issue a Change Order as soon as practical following agreement with Supplier's Change Proposal or as otherwise provided in these General Conditions. Change Orders shall implement any Change to Contract Documents first proposed in a Change Notice, including any modifications thereto agreed upon by the District's Representative and the Supplier and approved by the District. If Supplier agrees with the terms and conditions of a Change Order, Supplier shall sign the Change Order and promptly return it to the District's Representative. If Supplier disagrees with the terms and conditions of a Change Order, Supplier shall follow the protest procedures set forth in Article P4.4.5. If the Supplier fails to follow the protest procedures in Article P4.4.5, the Supplier shall not be entitled to any claim for additional compensation or schedule extension arising out of or relating to the Change other than that specified in the Change Order. Whether or not Supplier has protested the Change Order, Supplier shall promptly proceed with the Work as indicated in the Change Order.

Supplier shall carry on the Work and adhere to the Work schedule during all disputes or disagreements with the District. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the District and Supplier may otherwise agree in writing.

P4.4.4.1 Schedule Extensions. If the Supplier is delayed in completion of the Work by reason of Changes made under this Article P4.4.4, or by District-controlled delays as specified in Article P8.2.2, and if the District agrees with the Supplier that a schedule extension is warranted, a Change Order will be furnished to the Supplier within a reasonable period of time specifying the number of Days allowed. Any cost changes related to a schedule extension will be determined in accordance with the provisions of Article P8.2.3.

P4.4.5 Change Order Protest Procedure. If Supplier disagrees with any terms or conditions set forth in a Change Order, Supplier shall sign the Change Order, indicate "protested" adjacent to Supplier's signature, and shall return the signed Change Order to the District's Representative within seven Days after receipt of such Change Order along with a written protest. The protest shall state the points of disagreement, include any Contract Document references, and shall propose a modification of the items. If a written protest is not submitted within the time period stated, or if the Supplier refuses to sign such Change Order, the Supplier will be deemed to have consented to the terms and conditions set forth in any Change Order which Supplier does not sign or protest within the time period stated. If the District disagrees with the Supplier's protest, Supplier shall follow the claims procedures in Article P9.6.

P4.4.5.1 Protests Related to Compensation. When the protest of a Change Order relates to compensation, the Supplier shall submit to the District's Representative information that is in sufficient detail that, in the District Representative's judgment, it enables the District's Representative to determine the basis for the compensation requested. The Supplier's protest shall conform with the following requirements:

- (a) The Supplier shall furnish, within seven Days following the protest, either the cost data in writing in sufficient detail to permit a cost analysis of all labor, material, Subcontract and other direct costs, or a request for extension of time in accordance with Article P4.4.5.1 (b) below. Such data shall cover all work involved whether such work was deleted, added, changed, delayed, or otherwise affected. The cost structure shall be consistent with the provisions of Article P9.2. Any amounts requested for Subsuppliers shall be supported by a similar cost breakdown, consistent with the provisions of Article

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P9.2. Failure to present such information and details will be sufficient cause for rejecting any protest.

- (b) The Supplier may request in writing an extension of time to submit its cost data. Such request shall include the reasons that the cost data cannot be submitted within seven Days, and the amount of additional time requested to submit its cost data. The District may grant such an extension in writing at its sole discretion.
- (c) The Supplier may amend its protest within seven Days after the date of original submittal of the protest. Any amendments presented after that time shall be considered only at the option of the District.
- (d) The Supplier shall cooperate with the District's Representative to reach agreement at the earliest practical date on the terms of compensation for the Change Order. When agreement has been reached, a revised Change Order will be issued. Unless and until the District and the Supplier agree upon other terms of compensation, the compensation shall be as specified under the protested Change Order.

If the District disagrees with the Supplier's protest or if Supplier disagrees with the revised terms of compensation, Supplier shall follow the claims procedures in Article P9.6.

P4.4.5.2 Protest Related to Contract Time. When the protest of a Change Order relates to extension of time due to delays, the Supplier shall, within seven Days of the protest, submit information to the District's Representative in accordance with the provisions of Article P8.2.2.

P4.4.6 Constructive Changes. If the Supplier considers that any action or direction by the District or District's Representative deviates from the Contract requirements or may entitle it to extra compensation or a time extension, the Supplier shall provide the District's Representative with a Notice of Potential Claim and shall be governed by the procedures of Article P9.6.

P4.4.7 Exclusive Remedies. The procedures specified in Articles P4.4, P8.2 and P9.6 of these General Conditions are the Supplier's exclusive remedies for actual or constructive changes or delays by the District. No course of conduct or dealings between the parties, no express or implied acceptance of changes or alterations to the Work, and no claim that the District has been unjustly enriched by an alteration or Change to the Work, shall be the basis of any other claim for an increase in Contract Price or extension in the time for completion of the Work.

P4.5 Increased or Decreased Quantities. For those items identified in the Bid or Proposal Schedule as unit price Bid or Proposal Items, increases or decreases in the quantity of a Contract item of work will be determined by comparing the total pay quantity of such item of work with the listed estimate of quantities therefor. If the total pay quantity of any item of work required under the Contract varies from the District's estimate of quantities therefor by 25 percent or less, payment will be made for the quantity of work of said item performed at the Contract unit price therefor unless eligible for adjustment pursuant to Article P4.4. If the total pay quantity of any item of work required under the Contract varies from the District's estimate of quantities therefor by more than 25 percent, in the absence of an executed Change Order specifying the compensation to be paid, the compensation payable to the Supplier will be determined in accordance with Article P4.5.1, P4.5.2, or P4.5.3, as the case may be.

P4.5.1 Increases of More Than 25 Percent.

- (a) Should the total pay quantity of any item of work required under the Contract exceed the District's estimate of quantities therefor by more than 25 percent, the work in excess of 125 percent of such estimate and not covered by an executed Change Order specifying the compensation to be paid therefor will be paid for by adjusting the Contract unit price, as hereinafter provided or, at the option of the District's Representative, payment for the work involved in such excess will be made on the basis of Article P9.2.
- (b) Adjustment of the Contract unit price for such excess quantities will be the difference between the Contract unit price and the actual unit cost, which will be determined as hereinafter provided. If the costs applicable to such item of work include fixed costs, such fixed costs will be deemed to have been recovered by the Supplier by the payments made for 125 percent of the District's estimate of quantities for such item, and in computing the actual unit cost; such fixed costs will be excluded. Subject to the above provisions, such actual unit cost will be determined by the District's Representative in the same manner as if the work were to be performed in accordance with the provisions of Article P9.2; or such adjustment will be as agreed to by the Supplier and the District's Representative.
- (c) When the total compensation payable for the number of units of an item of work performed in excess of 125 percent of the District's estimate of quantities is less than \$5,000 at the applicable Contract unit price, the District's Representative reserves the right to make no adjustments in said price if it so elects,

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except that an adjustment will be made if requested in writing by the Supplier.

P4.5.2 Decreases of More Than 25 Percent.

- (a) Should the total pay quantity of any item of work required under the Contract be less than 75 percent of the District's estimate of quantities therefor, an adjustment in compensation pursuant to this Article P4.5.2 will not be made unless the Supplier so requests in writing. If the Supplier so requests, the quantity of said item performed, unless covered by an executed Change Order specifying the compensation payable therefor, will be paid for by adjusting the Contract unit price as hereinafter provided or at the option of the District's Representative, payment for such work will be made on the basis of Article P9.2, provided however, that in no case shall the payment for such work be less than that which would be made at the Contract unit price.
- (b) Adjustment of the Contract unit price for such decreased quantities will be the difference between the Contract unit price and the actual unit cost, which will be determined as hereinafter provided, of the total pay quantity of the item, including fixed costs. Such actual unit cost will be determined by the District's Representative based upon the requirements of Article P9.2 or such adjustment will be as agreed to by the Supplier and the District's Representative.
- (c) The payment for the total pay quantity of such item of work will in no case exceed the payment which would be made for the performance of 75 percent of the District's estimate of quantities for such item at the original Contract unit price.

P4.5.3 Eliminated Items.

- (a) Should any Contract item of the Work be eliminated in its entirety, in the absence of an executed Change Order covering such elimination, payment will be made to the Supplier for actual costs incurred in connection with such eliminated Contract item if incurred prior to the date of notification in writing by the District's Representative of such elimination.
- (b) If acceptable material is ordered by the Supplier for the eliminated item prior to the date of notification of such elimination by the District's Representative, and if orders for such material cannot be canceled, it will be paid for by the District at the actual cost to the Supplier. In such case, the material paid for shall become the property of the District and the actual cost of any further handling will be paid for by the District. If the material is returnable to the vendor

and if the District's Representative so directs, the material shall be returned and the Supplier will be paid for the actual cost of charges made by the vendor for returning the material. The actual cost of handling returned material will be paid for by the District.

- (c) The actual costs or charges to be paid by the District to the Supplier as provided in this Article P4.5.3 will be computed in the same manner as if the work were to be paid for in accordance with the provisions of Article P9.2. There shall be no additional amount added for loss of anticipated profit.

P4.6 Value Engineering Incentive. The District will pay an incentive for cost savings resulting from Value Engineering Change Proposals (VECP), which are accepted by the District consistent with the requirements of this Article P4.6.

P4.6.1 Application of VECP. This Article applies to those VECPs, which are originated, initiated and developed by the Supplier to change the Contract Drawings, Contract Specifications, or other requirements of the Contract. Changes to Supplier furnished designs and related documents are not eligible for consideration as VECPs. In order to be accepted under this Article P4.6, each VECP shall:

- (a) Be identified by the Supplier at the time of submittal to the Engineer as submitted pursuant to this Article;
- (b) Require a change to the Contract;
- (c) Decrease the Contract Price;
- (d) Not alter the items' characteristics such as functionality, service life, reliability, economy of operation, ease of maintenance, and necessary standardized features and appearance; and
- (e) Not require an unacceptable extension of Contract time.

P4.6.2 Content of VECP. Any VECP the Supplier submits shall be in sufficient detail to clearly define the proposed Change including:

- (a) A description of the difference between the existing and the proposed Contract requirements, and the comparative advantages and disadvantages of each;
- (b) Contract requirements recommended to be changed if the proposal is accepted;

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- (c) A detailed estimate of the amount of the net savings, as defined in Article P4.6.4, that will result from acceptance of the proposal;
- (d) A prediction of any effects the proposed change would have on costs of maintenance and operation; and
- (e) A statement of the time by which the proposal must be accepted so as to obtain the maximum price reduction, noting any effect upon the Contract completion time.

P4.6.3 Acceptance of VECP.

- (a) The District may accept or reject part or all of any VECP by giving the Supplier written notice thereof. Until such notice is issued, the Supplier shall remain obligated to perform in accordance with the terms of the Contract. VECPs will be processed expeditiously; however, the District shall not be liable for any delay in acting upon any proposal submitted pursuant to this Article. The decision of the District as to acceptance of any such proposal shall be final. The denial of any VECP shall not provide the Supplier with any basis for claim for damages or delay, nor for release from contractual responsibilities. The District's approval of a VECP shall not entitle the Supplier to additional compensation or time if the Work incorporating the VECP is defective, more expensive, or takes more time.
- (b) The Supplier has the right to withdraw part or all of any VECP at any time prior to acceptance by the District. Such withdrawal shall be made in writing to the District's Representative. Each VECP submitted by the Supplier shall remain valid for a period of 60 Days from date submitted, unless extended by mutual agreement. If the Supplier desires to withdraw the proposal prior to the expiration of this period the Supplier shall be liable for the costs incurred by the District in reviewing the proposal.

P4.6.4 VECP Contract Price Adjustment. When a VECP submitted pursuant to this Article P4.6 is accepted then:

- (a) An equitable adjustment in the Contract Price and in any other affected provisions of the Contract shall be made and the Contract modified in accordance with this Article P4.6 and Article P4.4, Changes, or other applicable Articles of the Contract.
- (b) The net savings resulting from the Change shall be shared between the Supplier and the District on the basis of 50 percent for the Supplier and 50 percent for

the District. Net savings shall be determined by deducting from the estimated gross savings, the Supplier's costs of developing and implementing the proposal, including any amount attributable to a Subsupplier, and the estimated amount of increased costs to the District resulting from the change, such as review, implementation, inspection, related items and District-furnished property. Estimated gross savings shall include Supplier's labor, material, equipment, overhead profit and bond. The Contract Price shall be reduced by the sum of the District's costs and the District's share of the net savings.

- (c) The Supplier is entitled to share in savings on this Contract only, to the full extent provided for in this Article. For purposes of sharing under Article P4.6.4 (b) above, the Supplier is not entitled to savings associated with any supplemental agreements to or other changes to the Contract related to the VECP.

P4.6.5 Inclusion in Subcontracts. The Supplier shall include value-engineering arrangements in any Subcontract, which, in the Supplier's judgment, appears to offer sufficient value engineering potential.

P4.6.6 Identical VECP. A VECP identical to one submitted under any other contract, by this Supplier, or by any other Supplier, may also be submitted under this Contract, provided that the proposal originated with such Supplier and not with the District.

P4.6.7 Restrictions. The Supplier may restrict the District's right to use any VECP data by marking it with the following statement:

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

P4.7 Guaranty of Work. The Supplier guarantees that the Work and any portion thereof: (a) shall meet the requirements of the Contract; (b) shall be free of discrepancies and defects in material and workmanship; (c) shall be free of discrepancies and defects in design(s) where such design(s) is performed or provided by Supplier

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or Subsuppliers; and (d) shall be free of all liens, encumbrances, and other rights and interests of third parties. This guaranty shall apply to discrepancies and defects that are discovered within 12 months after the date of Notice of Completion. If corrective work is performed by the Supplier or Subsuppliers under this guaranty, the guaranty shall also apply to discrepancies and defects in the corrected work that are discovered within 12 months after the corrective work is completed. These guaranty terms shall be extended for any period that a portion of the Work cannot be used for the purpose intended as a result of discrepancies or defects. This guaranty shall apply whether or not designs, data, or information have been reviewed or approved by the District, but shall not apply to discrepancies or defects caused by the Work being subjected to conditions substantially more severe than those described in the Contract.

P4.7.1 Discrepancies and Defects. The District's Representative will notify the Supplier in writing, or by telephone or fax confirmed in writing, on discovery of a discrepancy or defect covered by this guaranty. Within 14 Days after such notice, the Supplier shall propose an acceptable method of correcting the discrepancy or defect which meets all requirements of the Contract and involves the least loss of operating time. Such method of correcting the discrepancy or defect may include but not be limited to redesign, repairs, or replacement of defective work. The District, in its sole discretion, may select Supplier's proposed method meeting such criteria or any other method of correcting the discrepancy or defect. The District will reimburse the Supplier for any difference in cost to the Supplier between the selected method and the proposed method. In circumstances in which the District determines that it would be inefficient or impractical for the Supplier to perform the corrective work, the District reserves the right to select another firm to perform the corrective work or to complete the work using District forces. Such corrective work by another firm or by District forces shall be at Supplier's expense, provided that Supplier is kept fully informed as to the details and costs of any such corrective work. If the Supplier performs work on District property under these guaranty provisions, the Supplier shall furnish insurance coverage therefor as specified in the Supplementary Conditions. Prior to beginning such work, the Supplier shall furnish certificates satisfactory to the District as to contents and carriers of such insurance.

P4.7.2 Corrective Work. Unless otherwise required by the District, the Supplier shall commence to perform the corrective work required to satisfy this guaranty within 21 Days from the date of written notification. The Supplier shall be aware that work hours may be limited and are subject to BART operations schedules and rules, for which there will be no additional compensation due the Supplier.

In order to minimize the District's loss of operating time, the District may require the Supplier to perform the corrective work on an overtime and/or shift work basis, and to procure required materials using the fastest means available, all at no additional cost to the District. The Supplier shall diligently prosecute the corrective work upon commencement and shall complete such corrective work within 60 Days from commencement, unless Supplier can demonstrate to the District that completion within such time is commercially impracticable. The Supplier shall perform such tests as the District may require to verify that corrective work complies with the requirements of the Contract Documents. The Supplier shall bear all costs associated with corrective work and testing; including the removal, replacement, and reinstallation of equipment and materials necessary to gain access.

P4.7.3 Replacement Parts. District-owned spare parts shall not be used for guaranty purposes. The Supplier shall maintain a sufficient quantity of replacement parts on hand within the District to repair failures and defects covered by the guaranty. The security, control, shipping, and disposition of Supplier-owned parts shall be the responsibility of the Supplier.

P4.8 Confidential Information. During the performance of the Work it may be necessary for the District to make confidential technical information available to the Supplier. The Supplier agrees to use all such information solely for the performance of the Work and to hold all such information in confidence and not to disclose the same to any third party without the prior written consent of the District. Likewise, the Supplier agrees that all technical information developed in connection with the Work shall be used solely for the performance of the Work, and shall be held in confidence and not disclosed to any third party without the prior written consent of the District.

P4.8.1 Confidential Technical Information. Confidential technical information shall mean technical information designated by the District as confidential, provided such information does not correspond in substance to information: (a) which was developed by and in possession of the Supplier prior to first receipt from the District; (b) which is now, or hereafter becomes through no act or failure to act on the part of the Supplier, published information generally known on a non-confidential basis; or (c) which heretofore was or hereafter is furnished to the Supplier by a third party as a matter of right without restriction on disclosure.

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P4.9 Ownership of Work Products.

P4.9.1 Documents. All information, including drawings, designs, specifications, manuals, reports, studies, surveys, models, software including source code and any other documents, materials, data, and products ("Work Products") prepared or assembled or developed by Supplier or obtained from others, including Subsuppliers, by Supplier in performance of the Work whether or not required to be furnished to the District, shall be the property of the District and may be used by the District without restriction. Prior to the issuance of Notice of Completion, the Supplier shall provide the District with a list of all such information which has not previously been furnished to the District. The District will then have 30 Days to advise the Supplier which information shall be furnished to the District, at which point it shall be provided to the District. Supplier shall be responsible for the preservation of any and all Work Products prior to transmittal to the District; and Supplier shall replace any such Work Products as are lost, destroyed or damaged while in its possession without additional cost to the District.

P4.9.2 Assignment of Rights. Supplier hereby assigns to the District all rights, title, and interest including, but not limited to, copyright, patent, trademark, and trade dress rights, in and to the Work Products. Supplier acknowledges the District's exclusive rights to reproduce, publish, display, create derivative works from, sell, transfer, or otherwise exploit ("Use"), and permit others to Use all or any part of the Work Products, and to obtain and hold in its own name patents, copyright, and/or trademark registrations for the Work Products. Supplier shall provide all documentation, information, and assistance reasonably required by the District to obtain such registrations or patents, or with respect to claims that third parties have infringed the Work Products.

P4.9.3 Warranty of Work Product. Supplier warrants and represents that the Work Products are original to Supplier or its Subsuppliers and shall not infringe the copyright, trademark, trade secret, privacy, publicity, patent, or other intellectual property or proprietary rights of any third party; Supplier shall not attempt to license or transfer to any person or entity any interest in the Work Products; and Supplier shall obtain from all Subsuppliers written assignment of all rights, title, and interest, including copyright and other intellectual property rights, in their contributions to the Work Products. The Supplier shall insert in any Subcontracts the clauses set forth in this Article P4.9, and also a clause requiring all Subsuppliers to include these clauses in any lower-tier Subcontracts.

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ARTICLE P5

CONTROL OF WORK

P5.1 Authority of District's Representative. The District's Representative, under authority from the District, has the responsibility to administer the Contract so that the completion thereof may be accomplished in accordance with contractual requirements. The District's Representative's authority is or may be subject to certain monetary or other limits that have been or will be disclosed to the Supplier, and Contract changes exceeding such limits shall require approval of other District personnel. Should, in the opinion of the District's Representative, the performance of the Supplier or the quality of Supplier's work, or materials furnished, not meet the standards specified, the District's Representative may take or require such measures as the District's Representative deems necessary to ensure compliance with contractual requirements.

P5.2 Contract Documents. The District will furnish as soon as available, and at no expense to the Supplier, Contract Documents in quantities indicated in the Supplementary Conditions.

P5.2.1 Conformity to Contract Documents. The Work in all cases shall conform to the requirements of the Contract Documents or approved changes thereto.

P5.3 Manufacturing Drawings. If, within three years from issuance of a Notice of Completion, the Supplier's business is permanently terminated for any reason, or if the Supplier discontinues production of any or all manufactured items produced under the Contract, the Supplier shall, within 30 Days following such termination or discontinuance, deliver to the District a complete set of all drawings necessary to manufacture those items produced under the Contract which the Supplier no longer produces. In the event the Supplier's business is terminated or the Supplier discontinues producing any or all of the items produced under the Contract, the Supplier shall grant a royalty-free, nonexclusive license to the District to make, use, have made, sell, or dispose of any such items which the Supplier no longer produces. The Supplier shall insert in any Subcontracts the clauses set forth in this Article P5.3, and also a clause requiring all Subsuppliers to include these clauses in any lower tier Subcontracts.

P5.4 Coordination and Interpretation of Contract Documents. The documents comprising the Contract Documents are intended to be complementary, and to describe and provide for a complete Work.

P5.4.1 Precedence of Documents. The Contract Documents shall govern in the following order of precedence:

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

P5.4.2 Explanations. Should it appear that the Work or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Supplier shall promptly apply to the District's Representative for such further written explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or question arising respecting the true meaning or intent of the Contract Documents, reference shall be made to the District's Representative. Failure to apply to the District's Representative shall waive any claim by the Supplier arising out of claimed lack of detail or explanation.

P5.4.2.1 District's Cost. The District reserves the right to charge the Supplier for the District's costs incurred in providing answers that could have been reasonably ascertained by the Supplier from other sources. Such expenses may include costs to the District for providing personnel to perform tasks on behalf of the Supplier and shall be subject to an advance notice to the Supplier that such expenses are expected to be incurred. These expenses may be deducted as unilateral credit Change Orders or as part of the Change Orders issued in accordance with Article P4.4.

P5.4.3 Precedence of Drawings. In case of differences between small and large-scale Contract Drawings, the large-scale Contract Drawings shall govern. Schedules on Contract Drawings shall take precedence over conflicting notations on such drawings. In the event of discrepancy between any drawing and the figures written thereon, the figures, unless otherwise indicated, shall govern over scaled dimensions.

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P5.4.4 General Terms Regarding District Requirement or Approval. Wherever in the Contract Documents the words "directed," "required," "ordered," "designated," "prescribed" or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription" of the District is intended and similarly words "approved," "acceptable," "satisfactory" or words of like import shall mean "approved by," "acceptable to" or "satisfactory to" the District, unless otherwise expressly stated.

P5.5 Order of Work. When required by the Contract Documents, the Supplier shall follow the sequence of operations set forth therein. Full compensation for conforming to such requirements will be considered as included in the prices paid for the various Contract items of the Work and no additional compensation will be allowed therefor.

P5.6 Subcontracting. The Supplier is responsible for the fulfillment of the Contract and shall keep the Work under the Supplier's control. No contractual relationship shall exist under the Contract other than the contractual relationship between the District and the Supplier. The Supplier shall be obligated to assist the District in the enforcement of any rights, including those under equipment warranties, that the District has against any Subsupplier. Any claim or Change Proposal by Supplier for additional compensation or schedule extension based on a Subsupplier's claim or Change Proposal shall be passed on to the District for review only after an independent review and determination by Supplier that such Subsupplier's claim or Change Proposal has merit under the terms and conditions of the Contract and Subcontract. Supplier shall provide on District supplied form, written certification, including Supplier's written analysis, confirming that it has independently reviewed and determined that the Subsupplier's claim or Change Proposal has merit. Any such claims shall be submitted in accordance with Article P9.6 and any such Change Proposals shall be submitted in accordance with Article P4.4.2(c). Supplier shall require that each Subcontract contain language conveying the provisions of the General Conditions and Supplementary Conditions, throughout Subcontracts of any tier.

P5.6.1 Subcontracts. Following execution of the Contract, the Supplier shall furnish a complete copy of each executed Subcontract to the District's Representative prior to the Subsupplier's commencement of work.

P5.6.2 Replacement of Subsupplier. When a portion of the Work which has been subcontracted by the Supplier is not prosecuted in accordance with the Contract, the Subsupplier shall be replaced on request of the District's Representative and shall not again be employed on the

Work. Any such replacement shall be undertaken in accordance with District procedures for replacement of Subsuppliers.

P5.7 Assignment. The Supplier shall not assign all or any part of its rights under the Contract to any other person or other legal entity. The Supplier may assign monies due or to become due under the Contract and such assignment will be recognized by the District, if given proper notice thereof, to the extent permitted by law, but any assignment of monies shall be subject to all proper adjustments in favor of the District and to all deductions provided for in the Contract.

P5.8 Correspondence. Supplier's correspondence with the District shall be formatted and serialized in accordance with instructions provided by the District's Representative.

P5.9 Use of BART System. The Supplier shall obtain written permission from the District's Representative prior to operating any equipment or vehicles on, over, under, or adjacent to the BART System. The Supplier shall provide sufficient notice to the District's Representative in accordance with the District's requirements for granting such permission so as not to delay the Work.

P5.10 Replacement of Workers. If, in the District Representative's opinion, an employee of the Supplier or an employee of a Subsupplier appears to be unqualified, performing work in an unsuitable manner, acting in a disorderly or reckless manner, or violating BART's safety or security policies, the Supplier, if the District's Representative so requests, shall at its own expense promptly cause such person to be replaced by a suitably qualified person. The replaced person shall not again be employed on the Work.

P5.11 Inspection. The District's Representative shall at all times have access to the Work and the Supplier shall furnish every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of the Contract Documents. All work done shall be subject to the District Representative's inspection and approval.

P5.11.1 Supplier Inspection. The Supplier shall inspect all materials, supplies and equipment that are to be used, or incorporated in the Work. In addition, Supplier shall conduct a continuous program satisfactory to the District's Representative of quality control for all work performed under this Contract. The Supplier shall have the primary responsibility for inspecting the Work. The District's Representative's inspection is conducted to verify that the Supplier has performed its inspections properly. Any observation, verification, inspection, or approval of the

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Work by the District shall not relieve the Supplier of any of Supplier's obligations to perform the Contract as prescribed. If, in the opinion of the District's Representative, the Supplier fails to execute its responsibility for quality control and inspection on any part of the Work, the District may, at its option, conduct quality control and inspection activities in lieu of the Supplier at the Supplier's expense. Such inspection shall not relieve the Supplier of its liability for defective or unsuitable work as described in Article P4.7.1. Work not meeting the requirements of the Contract shall be made acceptable, and unsuitable work may be rejected, notwithstanding that payment for such work may have been previously authorized and included in a progress payment. A deduction may be made from subsequent progress payments and withheld until such time as the correction of such unsuitable work is made. The amount of the deduction will be set by the District's Representative.

P5.12 Removal of Rejected and Unauthorized Work.

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

P5.12.1 Unauthorized Work. All work done beyond the scope of the Contract and all work done without written authorization will be considered as unauthorized work. Upon order of the District's Representative, unauthorized work shall be remedied or replaced at the Supplier's expense.

P5.12.2 Failure to Remedy. Upon failure of the Supplier to remedy or to replace rejected or unauthorized work, or to comply promptly with any order of the District's Representative made under this Article P5.12, the District's Representative may cause rejected or unauthorized work to be remedied, or replaced by others and deduct the costs thereof from any monies due or to become due the Supplier.

GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

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GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

ARTICLE P6

CONTROL OF MATERIALS AND EQUIPMENT

P6.1 Source of Supply and Quality of Materials. The Supplier shall furnish all materials, equipment, and completely or partially assembled items required to complete the Work, except materials and equipment which are designated in the Contract Documents to be furnished by the District.

P6.1.1 Conforming Materials and Equipment. Notwithstanding any prior inspection or approval, only materials and equipment conforming to the requirements of the Contract Documents shall be incorporated in the Work.

P6.1.2 Manufacturer's Warranties and Product Data. Manufacturers' warranties, instruction sheets, material safety data sheets and equipment parts lists, which are to be furnished with certain materials and equipment, shall be delivered to the District's Representative before Notice of Completion. Supplier shall cause all manufacturers' warranties provided with any goods or services included in the Work to be given directly in favor of the District.

P6.1.3 Material and Equipment Sources List. The Supplier shall submit to the District's Representative a list of the Supplier's sources of materials and equipment as specified in the Contract Documents. The list shall be submitted within the time specified in the Contract Documents to permit proper inspection and testing of materials and equipment to be furnished from such listed sources in advance of their use. Inspections and tests, if made at any point other than the delivery site, shall in no way be considered as a guaranty of acceptance of any material or equipment which may be delivered later for incorporation in the Work.

P6.1.4 Interchangeable Parts. All like parts and components incorporated in the Work shall be interchangeable and identical unless otherwise authorized in writing by the District's Representative.

P6.2 Trade Names and Alternatives. For convenience in designation in the Contract Documents, certain materials or equipment to be incorporated in the Work may be designated under trade names or the names of manufacturers and their catalog information. Except in those instances where the product is a Designated Matching Product (DMP) designated to match others in use in a particular improvement either completed or in the course of completion, the use of alternative material or equipment which the Supplier represents to be of at least equal quality and of the required characteristics for the

purpose intended will be permitted, subject to each of the following requirements:

- (a) The burden of proof as to the quality and suitability of alternatives shall be upon the Supplier and the Supplier shall furnish all information necessary, including samples, as required by the District's Representative at no additional cost to the District. The District's Representative shall be the sole judge as to the quality and suitability of alternative materials or equipment and the District's Representative's decision shall be final.
- (b) Where use of an alternative material or equipment involves redesign of or changes to other parts of the Work, the cost and the time required to effect such redesign or changes will be considered in evaluating the suitability of the alternative material or equipment. The Supplier shall bear the cost of any required redesign and time impacts resulting from the acceptance of the use of alternative materials or equipment.
- (c) No tests nor action relating to the approval of substitute materials or equipment will be made until the request for substitution is made in writing by the Supplier accompanied by complete data as to the equality of the materials or equipment proposed. Such request shall be made in ample time to permit approval without delaying the Work. Request for substitution shall be made for all proposed substitutions but such request must be made within 40 Days of Award, unless a longer period is granted by the District.
- (d) Whenever classification, rating, or other certification by a body such as Underwriter's Laboratory (UL), or National Electric Manufacturer's Association (NEMA) is a part of the Contract Specifications for any material or equipment, proposals for use of alternative materials or equipment shall be accompanied by reports from the listed or equivalent independent testing laboratory approved by the District's Representative, indicating compliance with the requirements of the Contract Specifications.
- (e) The cost of all testing required to prove equality of the material or equipment proposed shall be borne by the Supplier.

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- (f) Approval of an alternative material or equipment shall be only for the characteristics or use named in such approval, and shall not be used to change or modify the Contract Specifications requirement, or to establish approval for material or equipment to be used on any other portion of the Work.

P6.2.1 Responsibility for Performance. Designation of brand name material or equipment in the Contract Specifications shall not relieve the Supplier from responsibility for performance in accordance with the requirements of the Contract. The Supplier is responsible for notifying the District's Representative of any inappropriate brand name material, or equipment that may be called for in the Contract Specifications and to propose a suitable substitute for consideration. Any substitution required by the District under this Article shall be implemented in accordance with the procedures for Changes set forth in Article P4.4.

P6.3 Quality Control. The Supplier shall provide and shall maintain a quality-control program, regulating methods, procedures, and processes to ensure compliance with standards of quality required by the Contract.

P6.3.1 Source Inspection. The District's Representative may inspect the production of materials or equipment at the sources of supply to ensure that materials and workmanship are in accordance with the requirements and intent of the Contract Documents. Such inspection will be undertaken with the cooperation and assistance of both the Supplier and the material or equipment producer. The District's Representative or other District designated representative shall have reasonable entry at all times to such sources of supply as concern the production of materials or equipment. Adequate facilities shall be furnished free of charge to make the necessary inspection. The District's Representative assumes no obligation to inspect materials or equipment at the source of supply. Responsibility for incorporation of satisfactory materials or equipment into the Work shall rest entirely with the Supplier, notwithstanding any prior inspection or test. The failure of the Supplier or its Subsuppliers to allow the District's Representative or other District designated representative to perform source of supply inspections may result in rejection of the material or equipment at no additional cost to the District or extension of Contract completion time.

P6.3.2 Reinspection. If the source inspection by the District's Representative or other District designated representative cannot be satisfactorily completed during the scheduled source inspection visit due to actions or omissions by the Supplier or its Subsupplier, or the source inspection results in rejection of the inspected material or equipment, and reinspection is required, the cost of additional inspection visits or reinspections shall be borne by the Supplier. The failure of the Supplier or its

Subsuppliers to allow the District's Representative or other District designated representative to perform source of supply reinspections may result in rejection of the material or equipment at no additional cost to the District or extension of Contract completion time.

P6.4 Certificate of Compliance. The District's Representative may permit the use of certain materials prior to sampling and testing if the materials are accompanied by a certificate of compliance stating that the materials involved comply in all respects with the requirements of the Contract Specifications. The certificate shall be signed by the producer of the material. A certificate of compliance shall be furnished with each lot of material and the lot so certified shall be clearly identified in the certificate.

- (a) All materials used on the basis of a certificate of compliance may be sampled and tested at any time. The fact that the material is used on the basis of a certificate of compliance shall not relieve the Supplier of responsibility for incorporating material into the Work which conforms to the requirements of the Contract Documents and all such material not conforming to such requirements will be subject to rejection.
- (b) The District's Representative reserves the right to refuse to permit the use of material on the basis of a certificate of compliance.
- (c) The form of the certificate of compliance and its disposition shall be approved by the District's Representative.

P6.5 Samples. The Supplier shall furnish to the District's Representative samples as Indicated in the Contract Specifications and as requested by the District's Representative. Samples shall be submitted without charge with shipping charges prepaid. Materials and equipment for which samples are required shall not be used until approval has been given by the District's Representative. Approval of a sample shall be only for the characteristics and use named in the submittal and approval, and such approval shall not be construed to change any Contract requirement.

P6.6 Testing. Unless otherwise noted in the Contract Specifications, testing shall be at the expense of the Supplier. Supplier shall furnish the District's Representative with a testing schedule for all tests required by the Contract Specifications not less than 20 Days prior to the start of each test. Supplier shall notify the District's Representative in writing 14 Days in advance of any change in the schedule.

GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

ARTICLE P7

COMPLIANCE AND LIABILITY

P7.1 Laws To Be Observed. The Supplier shall keep fully informed concerning all governmental requirements, including but not limited to all state, federal, county, and municipal laws, ordinances and regulations which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same including the specific legal requirements referenced in the Contract Documents. The Supplier shall at all times observe, and shall cause all Supplier's agents, employees and Subsuppliers to observe all such governmental requirements, and shall indemnify, defend and hold harmless the District, and all of its directors, officers, agents, and employees against all claims, liabilities, losses, damages and expenses (including attorneys' fees and related costs) arising from or based on the violation of any such governmental requirement whether by the Supplier or Supplier's agents, employees, or Subsuppliers. The District will not recognize any claim for additional compensation because of the need to comply with this provision and all applicable changes to state, federal, county, and municipal laws, ordinances and regulations. If any discrepancy or inconsistency is discovered in the Contract Documents for the Work in relation to any such governmental requirements, the Supplier shall immediately report the same to the District's Representative in writing.

P7.1.1 Permits and Licenses. Except as may be otherwise indicated in the Contract Documents, the Supplier shall procure all necessary permits and licenses, pay all charges and fees, comply with all permit conditions, and give all notices necessary and incident to the due and lawful prosecution of the Work. Failure of the Supplier to perform any of the requirements specified herein shall result in the Supplier's liability as set forth in Article P8.9.

P7.2 Patents. The Supplier shall assume all risks arising from the use of patented materials, equipment, devices, or processes, not furnished by the District, used on or incorporated in the Work and shall indemnify, defend, and hold harmless the District and all of its directors, officers, employees, and agents to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages, or expenses (including attorneys' fees and related costs), whether direct or indirect, arising out of or relating to the ownership, possession or use of any patented materials, equipment, devices, or processes. In case such materials, equipment, devices, or processes are

held to constitute an infringement and their use enjoined, the Supplier at Supplier's expense shall: (a) secure for the District the right to continue using said materials, equipment, devices, or processes by suspension of the injunction or by procuring a license, or licenses; (b) replace such materials, equipment, devices, or processes with noninfringing materials, equipment, devices or processes; or (c) modify them so that they become noninfringing or remove the enjoined materials, equipment, devices, or processes and refund the sums paid therefor without prejudice to any other rights of the District.

P7.2.1 Licensing Agreement. Supplier agrees with the District with respect to licensing of patents and patents pending in accordance with the following:

- (a) The District may desire to purchase additional materials which duplicate the materials supplied under the Contract. In this case, the additional materials will be procured by the District in accordance with the Contract Specifications which will include the drawings and other documents purchased under this Contract.
- (b) If the District chooses to purchase from others equipment or materials covered by patents and copyrights held by the Supplier hereunder, Supplier agrees to license other suppliers and to assess royalty charges at reasonable rates which are not restrictive to trade.
- (c) The District shall have the right to use any or all of the Supplier's documents provided by the Supplier, in whatever manner determined to be necessary by the District in order to procure materials as specified in (a) above.
- (d) If the District chooses to produce or manufacture equipment or materials covered by patents and copyrights held by the Supplier using the District's own facilities or personnel, Supplier agrees to license the District to do so upon notification from the District and assess royalty charges at a reasonable rate not to exceed five percent of the District's cost for producing such equipment or materials.
- (e) Supplier hereby warrants that it owns and controls or shall obtain the right to the patents and patents pending and the right to grant the District the rights described herein without violating the rights of any

GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

third party. Supplier shall indemnify and hold the District harmless from any and all claims, liabilities, costs, losses, damages, or expenses, including but not limited to, reasonable attorney's fees, arising out of any breach or failure of any warranties or covenants made by Supplier herein.

P7.2.2 Copyrights. The Supplier shall assume all risks arising from the use of copyrighted materials, or software, not furnished by the District, used on or incorporated in the Work and shall indemnify, defend, and hold harmless the District, and all of its directors, officers, employees, and agents to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages, or expenses (including attorneys' fees and related costs), whether direct or indirect, arising out of or relating to the ownership, possession or use of any copyrighted materials or software. In case such materials or software are held to constitute an infringement and their use enjoined, the Supplier at Supplier's expense shall: (a) secure for the District the right to continue using said materials or software by suspension of the injunction or by procuring a license, or licenses; (b) replace such materials or software with noninfringing materials or software; or (c) modify them so that they become noninfringing or remove the enjoined materials or software and refund the sums paid therefor without prejudice to any other rights of the District.

P7.3 Payment of Taxes. The Contract Price paid for the Work shall include full compensation for all taxes, other than Federal Excise Taxes and California, state and local sales and use taxes, which the Supplier is required to pay, whether imposed by federal, state, or local government whether or not the laws, regulations, orders, and judgments respecting such taxes are changed following submission of the Supplier's Bid or Proposal or execution of the Contract. The Supplier shall promptly pay such taxes when and as they become due, and shall indemnify, defend, and hold harmless the District and all of its directors, officers, agents, and employees against any claims, losses, liabilities, penalties, interest, damages, or expenses (including attorneys' fees and related costs) resulting from failure by the Supplier or its Subsuppliers and vendors to pay such taxes or comply with the applicable tax laws. The District will reimburse the Supplier for any California, state and local sales and use taxes including District transactions and use taxes imposed as a result of transfer of title to property to the District, or which Supplier is liable to collect as a result of District use of such property. The District, as a political subdivision of the State of California, will furnish exemption certificates for Federal Excise Tax as required.

P7.4 Publicity. The District reserves the right to review and approve all District-related copy prior to publication.

Supplier agrees not to allow District-related copy to be published in Supplier's advertisements or public relations programs without prior approval from the District's Representative. Supplier agrees that published information on the District or the District's program shall be factual and in no way imply that the District endorses Supplier's firm, service, or product.

P7.5 Language. All specifications, drawings, manuals and other documents to be prepared under the Contract shall be written in the English language.

P7.6 Passing of Title and Risk of Loss. The receipt signed by the District's Representative upon delivery of the procured materials does not constitute the District's acceptance of either the condition of the material or its conformance with the terms of the Contract. Risk of loss for the material shall pass to the District at the time of delivery. Title to material shall not pass to the District until written acceptance thereof.

P7.6.1 Acceptance of Procured Items. Acceptance of procured items by the District shall occur only after the items have satisfactorily been inspected by the District's Representative at Supplier's plant and after satisfactorily passing the District's Representative's final inspection after delivery. The District's Representative will notify the Supplier in writing whether or not the items have been accepted. If the items are not accepted, the letter will furnish details of the deficiencies to be resolved by the Supplier. Such District's Representative inspections or acceptance by the District shall not constitute a waiver, modification, or exclusion of the guaranty provided in Article P4.7.

P7.7 Safety and First Aid Requirements. The Supplier shall promptly and fully comply with and carry out, and shall without separate charge therefor to the District enforce compliance with the safety and first aid requirements stated in the Contract Documents, prescribed by applicable laws and regulations and those prescribed by any official or representative charged with the enforcement thereof. The Supplier shall take such other measures as may be necessary to the end that work shall be done in a safe manner and that the safety and health of the employees and the people of local communities is safeguarded. Compliance with the provisions of this Article P7.7 by Subsuppliers shall be the responsibility of the Supplier. Upon the failure of the Supplier to comply with any of these requirements, the District's Representative shall have the authority to stop any or all operations of the Supplier affected by such failure until such failure is remedied. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time or for increased costs or damages by the Supplier.

GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

P7.8 Environmental Compliance. The Supplier shall comply with all laws, regulations, orders and decrees of any federal, state, or local government authority or court concerning environmental compliance.

P7.9 Indemnification. As between the District as one party, and the Supplier as the other party, the Supplier is deemed to assume responsibility and liability for all damage, loss, or injury of any kind or nature whatever to persons or property, public utilities, and non-transit facilities, caused by or resulting from or in connection with any action or omission on the part of the Supplier or any of Supplier's officers, agents, directors, employees, or Subsuppliers or their performance of the Work. The Supplier shall indemnify, defend and hold harmless the District, and any and all of its directors, officers, agents, or employees to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages, or expenses (including attorneys' fees and related costs), whether direct or indirect, for loss of or damage to any property (including the property of the District), for injury to or death of any person (including an employee of the District, public utilities, and non-transit facilities, or the Supplier or its Subsuppliers), or otherwise arising out of or relating to the Work. This duty on the part of the Supplier to indemnify, defend, and hold harmless the District shall expressly include all claims and lawsuits brought against the District where the District is named as a defendant but is not the real party in interest.

P7.9.1 District Negligence. The foregoing indemnification obligation shall not apply to liability arising solely from adjudicated or admitted active negligence or willful misconduct of the District, or its directors, officers, agents, employees, or independent contractors who are directly responsible to the District, or for defects in design furnished by such persons. If adjudicated or admitted active negligence or willful misconduct of the District has contributed to a loss, the Supplier shall not be obligated to indemnify the District for the proportionate share of such claims, loss, damage, charge, or expense caused by the active negligence or willful misconduct of the District.

P7.10 Loss of or Damage to Existing District Property. The Supplier shall endeavor to avoid damage to existing improvements or facilities of the District. The Supplier shall provide suitable safeguards to protect such objects and improvements from damage. If such objects or improvements are damaged by reason of the Supplier's operations, they shall be replaced or restored to a condition as good as the condition prior to the damage.

P7.11 Fair Employment Practices.

P7.11.1 State Fair Employment and Housing Act. The Supplier shall comply with the State Fair Employment and Housing Act (State Government Code Sections 12900 through 12996), and the regulations promulgated by the State Fair Employment and Housing Commission to implement said Act.

P7.11.2 Nondiscrimination. In the performance of the Work, Supplier agrees that it shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, or age in any manner prohibited by law. For purposes of this Article, "sexual orientation" shall mean a preference for heterosexuality, homosexuality, or bisexuality; or having a history of, or being identified with, any such preference. Supplier shall take affirmative action to ensure that applicants are hired and that employees are treated during employment in accordance with this non-discrimination obligation. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Supplier shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Article.

P7.11.3 Access to Supplier's Records. Supplier shall permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission for the purpose of investigation to ascertain compliance with the State Fair Employment and Housing Act.

P7.11.4 Violation of the State Fair Employment and Housing Act. Upon a finding of a violation of the State Fair Employment and Housing Act by Supplier or a finding in a final judgment by a court of competent jurisdiction in an action to which Supplier is a party, that Supplier has unlawfully discriminated against any employee or applicant for employment on any of the grounds set out in Article P7.11.2, the District will notify Supplier that unless it demonstrates to the satisfaction of the District within a stated period that the violation has been corrected, Supplier's right to proceed with the Work may be suspended or terminated, in whole or in part, pursuant to Article P8.2.4 and Article P8.4 respectively. The District will deem a finding of violation of the State Fair Employment and Housing Act to have occurred in the performance of the Work upon receipt of written notice from the State Fair Employment and Housing Commission

GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

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

P7.11.5 Provisions for Fair Employment Practices. Supplier shall include, and shall cause all Subsuppliers to include, the provisions of this Fair Employment Practices Article P7.11 in every Subcontract entered into related to the Contract.

P7.12 Governing Law and Choice of Forum. The Contract, and the relationship of the District and the Supplier arising out of or relating to the Contract, shall be governed by and construed in accordance with the laws of the State without regard to conflict of laws rules. Suit to resolve any dispute arising out of or relating to the Contract or to the relationship between the District and the Supplier, shall be filed in the United States District Court for the Northern District of California, unless subject matter jurisdiction is lacking, in which case suit shall be filed in the Superior Court of the State of California in and for the County of Alameda.

P7.13 Entire Agreement. The Contract including all documents and Contract Specifications incorporated therein by reference, constitute the entire agreement between the District and the Supplier with respect to the Work, and supersede any prior oral or written agreements, understandings and commitments.

P7.14 Modifications. Any waiver, modification, or amendment of any provisions of the Contract shall be effective only if in writing, signed by authorized representatives of both the District and Supplier, that specifically references the Contract. No waiver, modification, or amendment of any provisions of any of the Contract that is made orally shall be effective for any purpose unless it is documented in writing and delivered by one party to the other party within two working days, and thereafter signed by authorized representatives of both the District and the Supplier.

P7.15 Severability. Whenever possible, each provision of the Contract shall be interpreted in a manner as to be effective and valid under applicable law. However, if any provision, or part of any provision, should be prohibited or

invalid under applicable law, such provision, or part of such provision, shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Contract.

P7.16 Strict Performance. A waiver by the District of a default, or of a requirement of the Contract will not constitute a waiver of any default or of such requirement in any other situation or circumstance.

P7.17 Financial Contribution Limitations.

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

P7.18 Site Security And Access. Supplier shall comply with the District's site security requirements which include, but are not limited to, requiring photographic identification badges, submitting names and dates of birth of all personnel, including Subsuppliers of any tier, working on District property or facilities. All badges shall be returned to the District at the completion of the Work. In the event Supplier fails to comply with the District's site security requirements, Supplier's personnel, including Subsuppliers, may not be allowed on the District property or facilities. No extension of time for completion of the Work or additional compensation for delay claims will be granted in the event such personnel are excluded from the District property or facilities.

P7.19 Notification of Third Party Claims. In accordance with the provisions of State Public Contract Code Section 9201, the District will notify the Supplier in a timely manner of the receipt of any third party claim relating to the Contract. The District is entitled to recover its reasonable costs incurred in providing this notification.

P7.20 Independent Contractor. The Supplier is an independent Contractor with respect to the performance of the Work, retaining control over the detail of its own operations, and the Supplier shall not be considered the agent, partner, fiduciary or trustee of the District.

GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

ARTICLE P8

PROSECUTION AND PROGRESS

P8.1 Time of Completion and Delivery. The Supplier shall complete and shall deliver to the site or sites Indicated all designated portions of the Work in all parts and requirements within the number of Days or by the calendar date set forth in the Contract Documents. Time is of the essence under the Contract.

P8.1.1 Notice of Completion. When all of the services have been performed and all of the Work has been delivered in the quantities indicated, except as the Work may have been revised by Change Order, the Work will be inspected by the District's Representative. If the District's Representative finds that the Work has been completed in all respects, and the Record Documents have been submitted, and the required training has been completed, all in accordance with the Contract Documents, the District will issue a Notice of Completion and make payment in accordance with Article P9.7. Except as otherwise indicated in the Contract Documents, including General Conditions Articles P2.1, P4.7, P5.3, P6.1.2, P6.1.2, P7.2, P7.9, and P9.9, the Supplier will, after receipt of such Notice of Completion, be relieved of further responsibility under the Contract.

P8.2 Delays.

P8.2.1 Liquidated Damages. In the event all or any designated portion of the Work called for under the Contract is not completed within the number of Days set forth in the Contract Documents, damage will be sustained by the District, and it is difficult or impossible to determine the extent of such damages, accordingly the Supplier shall pay to the District the amount set forth in the Supplementary Conditions per Day as liquidated damages for every Day's delay in completion of the Work or any designated portion thereof in excess of the number of Days prescribed. Such amounts are recognized by the parties at the time of entering into the Contract to be reasonable under the circumstances. The District may, from time to time, deduct liquidated damages from any monies due or that may become due the Supplier under the Contract. The District is not obligated, however, to make such a deduction or to provide notice thereof. If such deducted monies are insufficient to recover the liquidated damages owing, the Supplier or the Supplier's surety or sureties shall pay to the District any deficiency within 30 Days after completion of the Work.

P8.2.2 Extension of Time for Certain Delays. To the extent that the Supplier proves:

- (a) that the Supplier has been delayed in completion of the Work by reason of changes made by the District under Article P4.4, or a temporary suspension under Article P8.2.4 attributable to the District, or by any other action or omission of the District;
- (b) that the Supplier is not concurrently responsible for such delay or other concurrent Supplier-controlled delay;
- (c) that such delay resulted in extension of the time for performance of the Work beyond the Contract completion date or any milestone for which liquidated damages have been specified; and
- (d) that the Supplier has strictly complied with the notice and other claims procedures set forth in Article P9.6; then,

an extension of time commensurate with the delay thus caused will be granted and the Supplier shall be relieved from any claim for liquidated damages for the period covered by such extension of time. Approval by the District of the Supplier's request for schedule extension will be made pursuant to Article P4.4.4.1.

P8.2.3 Compensation for Certain Delays. To the extent that the Supplier proves:

- (a) that the Supplier has been delayed in completion of the Work by reason of Changes made by the District under Article P4.4, or a temporary suspension under Article P8.2.4 attributable to the District, or by any other action or omission of the District;
- (b) that the Supplier was not concurrently responsible for the delay;
- (c) that such delay resulted in extension of the time for performance of the Work beyond the Contract completion date or any milestone for which liquidated damages have been specified;
- (d) that the Supplier has suffered actual losses as a result of the delay;
- (e) that, but for the District's actions, the Supplier could not have suffered such actual losses;

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- (f) that the Supplier could not mitigate such actual losses despite taking all precautionary and remedial actions;
- (g) that the delay was not within the contemplation of the Contract; and
- (h) that the Supplier has strictly complied with the notice and other claims procedures set forth in Article P9.6; then,

the District shall pay to the Supplier as full compensation for any such delay, and for any actual and real disruption which may have been associated with any such delay which the Supplier can clearly quantify, calculate, and document, the amount of the actual loss excluding profit as computed in accordance with Article P8.2.3.1. The Supplier shall establish and maintain detailed records to segregate the additional costs involved for such delays. Unless the Supplier satisfies the provisions of this Article, the Supplier's sole remedy for District-caused delay shall be an extension of time under Article P8.2.2.

P8.2.3.1 Computation of Actual Loss. Actual loss shall be understood to include only the reasonable, adequately supported actual costs compliant with the FAR Cost Principles for the Supplier and the Cost Principles applicable to Subsuppliers incurring delay costs, for idle time of equipment, necessary payment for idle time of workers, and indirect costs as specified herein, that are attributable to a delay by the District. Costs incurred before the delay are not compensable as part of the actual loss. Compensation for actual loss will be determined in accordance with the provisions of Article P9.2.

P8.2.4 Temporary Suspensions of Work. The District, in its sole discretion, reserves the right to stop or suspend all or any portion of the Work for such period as the District may deem necessary. The suspension may be due to the failure on the part of the Supplier to carry out orders given or to perform any provision of the Contract or to factors that are not the responsibility of the Supplier. The Supplier shall comply immediately with the written order of the District to suspend the Work wholly or in part. The suspended work shall be resumed when the Supplier is so advised in writing by the District.

P8.2.4.1 Suspension Due to Supplier's Failure. If the suspension is due to some failure on the part of the Supplier, all costs and delays shall be at no additional expense to the District.

P8.2.4.2 Supplier's Responsibility. In the event of a suspension of the Work or any portion thereof, the Supplier shall not be relieved of Supplier's responsibilities as set forth in Article P7.

P8.2.5 Force Majeure. The Supplier will be granted an extension of time and will not be assessed with liquidated damages for any portion of the delay in completion of the Work performed on the Critical Path caused by acts of God, of the public enemy, fire, floods, earthquakes, unusually severe weather, epidemics, quarantine restrictions, strikes, and freight embargoes; provided that the Supplier establishes that the Work would have been timely completed but for the force-majeure event, that the Supplier has taken reasonable precautions to prevent delays due to such causes, and provided that the Supplier shall strictly comply with the notice and other claims procedures set forth in Article P9.6. The above-indicated causes for which extensions of time have been granted shall not be the basis for additional compensation for any of the Supplier's costs.

P8.3 Shortage of Materials. No extension of time will be granted for a delay caused by a shortage of materials (except District-Furnished Materials), unless the delay was unforeseeable to the Supplier or any Subsupplier and unless the shortage of materials was beyond the control or without the fault or negligence of the Supplier or any Subsupplier. The Supplier shall furnish to the District's Representative documentary proof that the Supplier has diligently made every effort to obtain such materials from all known sources reasonably available for supporting the Work, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire Work, which could not be compensated for by revising the sequence of the Supplier's operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time and no consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost or price, unless it is shown to the satisfaction of the District's Representative that such material could have been obtained only at exorbitant prices entirely out of line with current rates taking into account the quantities involved and the usual practices in obtaining such quantities. The term "shortage of materials," shall not apply to materials, parts, articles or equipment which are processed, made, constructed, fabricated, or manufactured to meet the specific requirements of the Contract. Delays in obtaining materials due to priority in filling orders will not constitute a shortage of materials. The granting of such extensions of time shall not be the basis for additional compensation for any of the Supplier's costs.

P8.4 Termination for Supplier's Default. If the Supplier is in default and the Supplier fails to remedy its default within seven Days after receipt from the District's Representative of written notice of such default, the District may, in its discretion, by written notice to the Supplier, terminate the Contract or such portion thereof

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which the District's Representative deems is most directly affected by the default. The District may unilaterally defer termination beyond the seven Day time limit if in the opinion of the District's Representative, the Supplier is making satisfactory efforts to remedy its default.

P8.4.1 Definition of Default. The term "default" for purposes of this Article P8.4 includes, but is not limited to: violation of the terms of the Contract; abandonment, assignment, or subletting of the Contract without approval of the District; filing a petition for bankruptcy by or against the Supplier or for appointment of a receiver for Supplier's property; failure of the Supplier to make delivery of the equipment, materials, or supplies, or to perform the services or other required acts within the time specified in the Contract or any extension thereof; use of materials, supplies, plant or equipment of improper quality or quantity; failure to use an adequate number of properly skilled workers; failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; or the performance of the Contract in bad faith.

P8.4.2 Expense of Completion. Upon the District's termination of the Contract or a portion of it, the District shall have the right to complete the Work or the portion terminated by whatever means and methods it deems expedient, including the hiring of others on such terms as the District deems advisable. The expense of completing the Work or portion thereof shall be charged to the Supplier. The expense so charged may be deducted by the District out of such monies as may be due or become due to the Supplier. The District may withhold all or any part of any payments otherwise due the Supplier until completion and final settlement of the Work covered by such notice of default.

P8.5 Termination for the Convenience of the District. The performance of the Work may be terminated in whole or in part by the District upon written notice to the Supplier whenever the District determines that such termination is in its best interest. After receipt of said notice, the Supplier shall submit to the District's Representative its termination claim which claim shall be submitted in accordance with the claims provisions of Article P9.6 and payment provisions in Article P9.7. Any such claim may include a reasonable allowance for profit on work done, but shall not include loss of anticipatory profit or profit on work not done.

P8.6 Termination for Causes Beyond the Control of the Supplier. The performance of the Work may be terminated by the District, in its sole discretion, upon application therefor by the Supplier for unforeseen causes beyond the control and without fault or negligence of the Supplier, including any force majeure event as defined in Article P8.2.5, if such causes irrecoverably disrupt or

render impossible the Supplier's performance hereunder. Should any such unforeseen circumstances occur, the Supplier shall file written notice with the District's Representative within 48 hours after the circumstances come to the Supplier's notice and shall furnish the District's Representative with documentary evidence of the fact and effect of the circumstances. Upon termination pursuant to this Article P8.6, the Supplier shall be compensated for all equipment, materials, supplies and services accepted by the District whether such acceptance occurs before or after such termination.

P8.7 Actions Taken Following Termination. Immediately upon receipt of a Notice of Termination, the Supplier shall: (a) stop work under the Contract on the date and to the extent specified in said notice; (b) terminate, unless otherwise directed by the District's Representative, all orders and Subcontracts to the extent that they relate to the performance of work terminated and place no further orders or Subcontracts, except as may be necessary for the completion of such portion of the Work under the Contract as is not terminated; (c) if directed by the District's Representative, assign to the District all of the rights, title, and interests of the Supplier under any orders and Subcontracts; (d) if directed by the District's Representative, transfer title and deliver to the District the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination and the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the District; and (e) complete performance of such part of the Work as shall not have been terminated by said notice.

P8.8 Liability for Expenses. Supplier shall be liable to the District for expenses incurred due to the Supplier's failure to perform tasks in accordance with the Contract. Such expenses may include costs to the District for providing material or personnel to perform tasks on behalf of the Supplier and shall be subject to an advance notice to the Supplier that such expenses are expected to be incurred. These expenses may be deducted as unilateral credit Change Orders or as part of the Change Orders issued in accordance with Article P4.4.

P8.9 Liability to District and Permit-Issuing Authority. The Supplier shall be fully liable to the District and any permit-issuing authority for any failure to obtain a permit or any failure to comply with the terms of any permit, including completing work authorized by any government permit within the time or times, if any, stipulated in such permit, in the full amount of any and all damages or consequences, including fines or penalties the District may

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suffer as a direct or indirect result of such failure. If any such failure delays completion of the Work, or any part thereof, for which liquidated damages are stipulated, such damages shall be over and above any liquidated damages for such delay provided in the Contract. As used herein, the term "permit-issuing authority" includes any authority whose permit or license is necessary and incidental to the due and lawful prosecution of the Work.

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ARTICLE P9

PAYMENT, RECORDS, AND CLAIMS

P9.1 Scope of Payment. The Supplier shall accept the compensation provided for in the Contract as full payment for furnishing all services, labor, materials, tools, equipment, and incidentals necessary to complete the Work and for performing all work contemplated and embraced under the Contract; and, except as otherwise indicated, for all risks of every description connected with the prosecution of the Work; also for all expense incurred in consequence of the suspension or discontinuance of the Work as herein specified; and for completing the Work according to the Contract. Neither the payment of any estimate nor of any retained percentage shall relieve the Supplier of any obligation to make good any defective work or material.

P9.1.1 No Separate Payment for General Conditions. Except as specifically provided otherwise, no separate payment will be made for any of the requirements of these General Conditions nor of the respective Supplementary Conditions relating thereto, and the cost thereof shall be considered as included in the prices paid for the various contract items included in the Supplier's Bid or Proposal.

P9.1.2 Unit Price. If the "payment" clause in the Contract Specifications relating to any unit price in the Bid or Proposal Schedule requires that the said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured for payment using a payment clause elsewhere in the Contract Specifications or paid for under any other Bid or Proposal Item which may appear elsewhere in the Contract Specifications or in the Bid or Proposal Schedule.

P9.1.3 Loss of Profits. No compensation will be made in any case for loss of anticipated profits.

P9.2 Negotiated or Reimbursed Costs. Work performed on negotiated cost or cost reimbursable basis, will be paid for at the District's discretion, on the basis of any of the following:

- (a) Adequate price competition;
- (b) Established catalog price;
- (c) Price set by law or regulation;
- (d) In accordance with a cost structure agreed to by the District's Representative; or

- (e) Actual cost supported by the Supplier in accordance with the cost structure requirement in Article P9.2.3.

The Supplier will be paid therefor as hereafter provided, pursuant to an executed Change Order.

P9.2.1 Competitive Procurement. Adequate price competition is deemed to exist when three or more viable price quotes or proposals are obtained from responsible proposers for the items of work to be furnished. For purchases not exceeding \$2,500, an informal quote from one offeror may be considered adequate. For services other than design professional services not exceeding \$50,000 or purchases greater than \$2,500 but not exceeding \$40,000, at least three price quotes or proposals from independent responsible proposers may be deemed adequate.

P9.2.2 Catalog Price. Lowest available catalog price may be used for commercial items sold in substantial quantities to the public.

P9.2.3 Cost Structure. For work described in Article P9.2 (d) or (e), the Supplier shall submit within 30 Days following the request from the District's Representative, its cost structure and the cost structure for all Subsuppliers reasonably anticipated to perform a significant amount of work under the provisions of Article P9.2. The cost structure shall include all of the Supplier's or Subsupplier's indirect cost rates. The cost structure shall be consistent with that used to collect and invoice for costs submitted for payment. The Supplier and Subsuppliers submitting their cost structures shall demonstrate the ability to identify and segregate the costs of work performed under the provisions of Article P9.2 from the performance of the remainder of the Work, as well as segregating the costs of performance of the Work from the performance of other contracts. All costs covered by the proposed cost structure shall comply with the Cost Principles applicable to the entity proposing the cost structure. Proposed indirect cost rates will include descriptions of the indirect cost pools and the allocation bases used to distribute the indirect costs. Indirect cost rates shall be supported by sufficient computation detail to allow audit of their allowability, allocability, and reasonableness in accordance with the Cost Principles applicable to the proposing entity. The cost structure for the Supplier or Subsupplier shall be subject to approval by the District's Representative. For Subsuppliers that will perform a significant amount of work under Article P9.2 but that do not have a cost structure approved by the

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District's Representative, Supplier shall submit such Subsupplier's cost structures to the District's Representative as prescribed by this Article P9.2.3 as soon as it is known that such Subsupplier will perform work under Article P9.2.

P9.2.4 Cost Detail. The Supplier and its Subsuppliers shall maintain and provide detailed costs as approved by the District's Representative for work performed under Article P9.2. The cost details shall include: direct labor hours and rates, further described in Article P9.2.5, by job classification or discipline; direct material quantities and unit prices, as applicable, further described in Article P9.2.6; Subcontracts; and other direct costs. Only those indirect cost rates approved by the District's Representative shall be applied to the direct costs as described in the approved cost structure.

P9.2.5 Direct Labor. Direct labor costs paid for under Article P9.2 shall be the actual wages or salaries paid. The Supplier and its Subsuppliers performing work under Article P9.2 shall implement and maintain labor charging (i.e. timecard or payroll) procedures that meet the following criteria:

- (a) All time records shall be in writing, recorded by the employee, and verified by the immediate supervisor. Such records shall be complete and shall record all employees' activities whether or not related to work under Article P9.2, within a given accounting period, and shall identify by means of cost codes what activities were being performed.
- (b) All charges for labor shall be identifiable to the nearest half-hour.

P9.2.6 Direct Material. Direct material shall be furnished and priced on the same basis as for completion of the Work or competitively as described in Article P9.2. For negotiated material purchases, the pricing shall be supported by analysis of how the price was determined to be fair and reasonable including, for example, references to pricing for similar materials furnished from said source. If, in the opinion of the District's Representative, the Supplier does not furnish satisfactory evidence of the reasonableness of the cost of such materials from the actual supplier thereof, the District's Representative may determine that the cost of such materials shall be deemed to be the lowest current wholesale price at which such materials are available in the quantities concerned, delivered to the Supplier, less any discounts available to the Supplier.

P9.2.7 Other Direct Costs. Other direct costs shall be paid at actual costs supported by paid invoices.

P9.2.8 Profit or Fee. Profit or fee shall not exceed the total sum of the following:

- (a) Five percent of direct labor and material costs, and associated indirect costs determined by application of the Supplier's indirect cost rates to direct labor and material costs;
- (b) Two percent of Subcontract costs, including any Supplier's associated indirect cost determined by application of the Supplier's indirect cost rates to Subcontract costs, excluding Subsupplier's fee or profit; and
- (c) There shall be no fee or profit allowed on other direct costs, including associated indirect costs determined by application of the Supplier's indirect cost rates to other direct costs, or on facilities capital cost of money.

P9.2.9 Records. The Supplier shall maintain its records in such a manner as to provide a clear distinction between the direct costs of work performed or required to be performed on a negotiated or reimbursed cost basis and the other costs of the Work and the costs of other Contracts.

P9.2.10 Supplier's Cost Records. The Supplier's original cost records pertaining to work paid for on a negotiated or reimbursed cost basis shall be open to inspection or audit by representatives of the District during the life of the Contract and for a period of not less than three years after the date of final payment thereof, and the Supplier shall retain such records for that period.

P9.2.11 Payment. Payment as provided in Article P9.2 shall constitute full compensation to the Supplier for performance of work paid for on a negotiated or reimbursed cost basis and no additional compensation will be allowed therefor.

P9.3 Retention. In addition to amounts, if any, withheld pursuant to any other provision of the Contract, the District will retain an amount equal to five percent of the value of all the Work approved for payment until the issuance of the Notice of Completion.

P9.3.1 Substitution of Securities. At the request and expense of the Supplier, and following execution of an escrow agreement satisfactory to the District and in substantially similar form to that in Section 22300 of the State Public Contract Code, securities equivalent to any amount retained under Article P9.3 may be deposited with the District, or with a State or Federally chartered bank as escrow agent. Upon satisfactory completion of Contract requirements, the securities shall be returned to Supplier. Securities eligible for investment are those specified in

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Section 22300 of the State Public Contract Code.

P9.4 Invoices. The Supplier shall invoice for work completed in accordance with the Contract Documents.

P9.5 Testing. The Contract unit price(s) shall include full compensation for all testing required to be performed by Supplier under the Contract.

P9.6 Potential Claim. The Supplier shall not be entitled to any additional compensation or damages otherwise payable or to any extension of time for completion as a result of any act or failure to act by the District, the happening of any event or occurrence, or any other cause, unless the Supplier shall have given the District's Representative a written Notice of Potential Claim therefor as hereinafter specified and shall have complied with the other requirements specified in this Article P9.6; provided, however, that a Notice of Potential Claim will not be required for protests made in accordance with the change procedures of Article P4.4 until the completion of the procedures set forth in said Article.

P9.6.1 Notice of Potential Claim.

- (a) **Initial Notice.** The Supplier shall provide the District's Representative with an initial written notice of the Supplier's intent to file a potential claim. Such initial notice shall be provided not later than 48 hours following the occurrence of the event on which the potential claim is based, and shall contain as much information concerning the event and its impact on cost or schedule as is reasonably available to the Supplier within such time period.
- (b) **Written Notice of Potential Claim.** The Supplier shall provide the District's Representative with a written Notice of Potential Claim not later than 20 Days following the occurrence of the event on which its potential claim is based unless the District's Representative agrees in writing to an extension. The written Notice of Potential Claim shall be submitted on forms provided by the District, shall be certified with reference to the California False Claims Act, State Government Code Sections 12650-12655, and shall be signed by a representative of the Supplier having greater authority than the Supplier's Representative. The Notice of Potential Claim shall set forth the reasons for which the Supplier believes additional compensation or a schedule extension will or may be due, the applicable Contract references supporting such claim, the efforts taken and to be taken to prevent or minimize the costs or extension; the nature of the costs, including a detailed cost estimate with supporting breakdown of costs; the nature of the schedule extension involved, if

applicable; and impacts, if any, on Contract completion. Furthermore, the Supplier shall thereafter, on a monthly basis and not later than the 15th Day of the following month, submit to the District's Representative any costs, expenses or damages actually incurred during the month, and any identified delays by reason of the events giving rise to the Notice of Potential Claim. Failure to submit such monthly costs for all Notice of Potential Claims filed, shall be sufficient cause to deny any costs incurred subsequent to the filing of each said Notice of Potential Claim.

- (c) **Further Information.** All Notices of Potential Claim presented by the Supplier shall be in sufficient detail to enable the District's Representative to ascertain the basis and amount of said potential claim. The Supplier shall furnish, within 14 Days after the District's Representative requests in writing, such further information and details including, but not limited to, books of account, records and other documents of the Supplier and any of its Subsuppliers, as may be required by the District's Representative to determine the facts or contentions involved in the Supplier's notice. Failure to present such information will be sufficient cause for rejecting any potential claim after the District's Representative's request for further information, unless such time is extended in writing by the District's Representative.
- (d) **Minimum Content.** Notices of Potential Claim provided to the District's Representative shall as a minimum contain the detailed information required under Article P4.4.2(c) 4.
- (e) **Amendments.** The Supplier may amend any Notice of Potential Claim within seven Days after the date of the original notice. Any amendments presented after that time shall be considered only at the option of the District and shall not, without the written consent of the District's Representative, extend the Supplier's time to act pursuant to Article P9.6.
- (f) **Conferences.** The Supplier shall, as required by the District, meet and confer with the District's Representative or any other representative of the District involved in evaluating the Supplier's potential claim to discuss the potential claim. The District may require Supplier representatives having greater authority than the designated Supplier's Representative to participate in any such meetings.

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- (g) **Continuation of Work.** Notwithstanding any Notice of Potential Claim, the Supplier's duty to complete the Work in accordance with the Contract shall not be postponed or abated.

P9.6.2 District Review of Notice of Potential Claim.

- (a) In the absence of a written agreement extending its time to act, and subject to the requirements of applicable law, the District shall act on a Notice of Potential Claim within 45 Days after all data requested by the District's Representative has been provided. If the District fails or refuses to act on a potential claim within such time, the potential claim shall be deemed to have been rejected by the District on the last day of the period within which the District was required to act upon the potential claim. If the period within which the District was required to act is extended by agreement, the last day of that period shall be the last day of the period specified in such agreement.
- (b) Written notice of the action taken by the District will be delivered in the manner prescribed by Article P9.7.3. If the potential claim is deemed to be valid by the District, a Change Order will be issued in accordance with Article P4.4.
- (c) If the potential claim is rejected, or deemed to have been rejected, in whole or in part, the Supplier may file a claim against the District based on such potential claim after issuance of the final invoice in accordance with Article P9.7, subject to the requirements of applicable law, any Supplementary Conditions concerning resolution of claims, and Article P9.6.3 below.
- (d) The requirements of this Article P9.6.2 and any applicable statutory provisions affecting the time in which the Supplier may act pursuant to Article P9.6 may be waived by the District. Such waiver shall be in writing. Such waiver may be revoked by the District, effective not less than 30 Days following Supplier's receipt of the District's written notice of revocation.

P9.6.3 Deferral of Legal Action. It is the intention of Article P9.6 that differences between the parties arising under and by virtue of the Contract shall be brought to the attention of the District at the earliest possible time in order that such matters may be settled without a claim being filed, if possible, or other appropriate action promptly taken. The Supplier agrees to defer, in the absence of special written notice given by the District, the commencement of any legal action against the District on a matter required to be covered by written Notice of

Potential Claim pursuant to Article P9.6 until after the District has made payment on the approved final invoice pursuant to Article P9.7.

P9.6.4 Strict Compliance. Failure to comply strictly with the notice and other procedures set forth in Article P9.6 shall bar the Supplier from asserting any claim or right to compensation, damages, schedule extension, or any other relief.

P9.7 Final Payment and Claims. Within 30 Days after the date of Notice of Completion by the District, the Supplier shall prepare and present to the District's Representative a Proposed Final Invoice in writing showing the proposed total amount of compensation under the Contract, including therein an itemization of said amount segregated as to Contract item quantities, and other bases for payment, and showing all deductions made or to be made for prior payments and amounts to be kept or retained under the provisions of the Contract, together with any and all potential claims under Article P9.6 that have not yet been resolved or a statement that no claims will be filed. All prior invoices and payments shall be subject to correction in the Proposed Final Invoice. No claim for which a Notice of Potential Claim is required will be considered unless the Supplier has strictly complied with the notice provisions in Article P9.6.

P9.7.1 Final Invoices. The District will review Supplier's Proposed Final Invoice. Any changes or corrections found necessary will be presented to the Supplier for its consideration. Within 14 Days thereafter, Supplier shall submit a final invoice incorporating any changes or corrections made by the District together with any additional claims resulting therefrom. Upon approval by the District, this will become the Approved Final Invoice.

P9.7.1.1 Claims Review. Unless the parties agree otherwise in writing, the District will act upon the Supplier's claims stated in the Approved Final Invoice as follows:

- (a) For a claim of less than \$50,000.00, the District will respond in writing within 45 Days of receipt of the Approved Final Invoice. However, the District may request in writing within 30 Days of receipt of the Approved Final Invoice, additional information or documentation supporting the claim or relating to any defense or claim the District may have against the Supplier. If such additional information or documentation is requested, the District will respond in writing to the claim within 15 Days after receipt of the further information or documentation or within a period of time no greater than that taken by the Supplier in producing the additional information or documentation, whichever is greater.

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- (b) For a claim equal to or over \$50,000.00 and less than or equal to \$375,000.00, the District will respond in writing within 60 Days of receipt of the Approved Final Invoice. However, the District may request in writing within 30 Days of receipt of the Approved Final Invoice, additional information or documentation supporting the claim or relating to any defense or claim the District may have against the Supplier. If such additional information or documentation is requested, the District will respond in writing to the claim within 30 Days after receipt of the further information or documentation or within a period of time no greater than that taken by the Supplier in producing the additional information or documentation, whichever is greater.
- (c) For claims in excess of \$375,000.00, the District will respond in writing within 90 Days of receipt of the Approved Final Invoice. However, the District may request in writing within 60 Days of receipt of the Approved Final Invoice additional information or documentation supporting the claim or relating to any defense or claim the District may have against the Supplier. If such additional information or documentation is requested, the District will respond in writing to the claim within 45 Days after receipt of the further information or documentation or within a period of time no greater than that taken by the Supplier in producing the additional information or documentation, whichever is greater.
- (d) If the District fails or refuses to act on a claim within such time, the claim will be deemed to have been rejected by the District on the last day of the period within which the District was required to act upon the claim.

P9.7.2 Withholding for Unpaid Claims. If Supplier files no claims within 30 Days after issuance of Notice of Completion by the District, and agreement is reached on all questions regarding the Proposed Final Invoice or upon final determination of all Supplier's claims, the District will pay the entire sum found due on the Approved Final Invoice, including the amount, if any, allowed on claims.

P9.7.2.1 Terms of Final Payment. Final payment will be made within 15 Days after District's approval of the Final Invoice, or 60 Days after Notice of Completion, whichever is later; provided, however, if an Approved Final Invoice has not been submitted within 60 Days after Notice of Completion by the District, the District may elect to make payment of sums not in dispute without prejudice to the rights of either the District or the Supplier in connection with such disputed sums.

P9.7.2.2 No Interest Accrual. Except as otherwise required by applicable law, interest shall not accrue in favor of the Supplier with respect to any claim asserted by the Supplier that has not been reduced to judgment.

P9.7.2.3 Rejected Claims Exceeding \$1 Million. In the event that the value of Supplier's rejected claims exceed \$1 million, and the Supplier intends to pursue such claims, the Supplier shall, within 15 Days of final payment, request in writing a meeting with the District. This meeting shall occur within 60 Days of final payment and shall be attended by the Chief Executive Officer of the Supplier or an individual specifically designated by the Chief Executive Officer, and the General Manager of the District or an individual specifically designated by the General Manager. Among other things, the parties shall consider at this meeting whether any other dispute resolution process is appropriate. Supplier shall file no lawsuit against the District, and the time for filing any lawsuit under Article P9.6.3 and under applicable law shall not commence until 60 Days after final payment or after the parties meet, whichever occurs first.

P9.7.3 Notices. The notices provided for in Article P9.6 and Article P9.7 hereof, shall be mailed or personally delivered as follows:

- (a) If to the Supplier, to the address to which it requests notice to be sent in the Bid or Proposal for the Contract; and
- (b) If to the District, to the representative of the District designated in the Contract, at the address therein set forth; with a copy to the District Secretary, San Francisco Bay Area Rapid Transit District, 300 Lakeside Drive, 23rd Floor, Oakland, California 94612; mailing address - P.O. Box 12688, Oakland, California 94604-2688.
- (c) New addresses may be substituted for those set out herein at any time upon written notice delivered pursuant to Article P9.7.

P9.8 Antitrust Claims. The Supplier represents that the prices quoted are not in violation of the Robinson-Patman Act or comparable California statutes and agrees to defend, hold harmless and indemnify the District from any claim, liability, loss, damages or expense, including attorneys' fees and related costs, incurred by it arising from the Robinson-Patman Act or comparable California statutes. In entering into the Contract, Supplier offers and agrees to assign to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Section 15 et seq.) or under the Cartwright Act (Chapter 2, commencing with Section 16700 of Part 2 of Division 7 of the State Business and

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Professions Code), arising from purchases of goods, materials, or services pursuant to the Contract. This assignment shall be made and become effective at the time the District tenders final payment to Supplier without further acknowledgment by the parties.

P9.9 Records and Audit. The Supplier shall maintain detailed books and records in accordance with generally accepted accounting principles and the Contract including all records reasonably necessary or desirable for the District to verify the amounts of compensation or schedule revision required under the Contract. Supplier shall permit the District and its authorized representatives to audit, inspect, examine, and copy Supplier's books, records, accounts, and any and all data relevant to the Contract at any reasonable time and shall provide such assistance as may be reasonably required in the course of such inspection including the right to interview personnel. The District further reserves the right to examine, and re-examine said books, records, accounts, and data during the three-year period following the final payment under the Contract and until all pending matters are closed, and Supplier shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three years after the final payment under the Contract and until all pending matters are closed. No additional compensation will be provided to the Supplier for compliance with the requirements of this Article P9.9. The Supplier shall insert in any Subcontracts the clauses set forth in this Article P9.9, and also a clause requiring all Subsuppliers to include these clauses in any lower tier Subcontracts. The Supplier shall be responsible for compliance by any Subsupplier or lower tier Subsupplier with the clauses set forth in this Article P9.9. Failure of the Supplier or any of its Subsuppliers to comply with the provisions of this Article P9.9 may result in the suspension of work related to the audit, and any delay in completion of the Work resulting from such suspension shall be the responsibility of the Supplier. The cost of any reaudit required by Supplier's or Subsupplier's failure to comply with this Article P9.9 shall be borne by the Supplier. Alternatively, the District may, at its sole discretion, elect to pay only the verifiable direct costs of work related to the audit until the audit requirements are met and any necessary audit has been successfully completed.

P9.9.1 Audit by State. Pursuant to State Government Code Section 8546.7, the parties to the Contract shall be subject to the examination and audit by the State Auditor, at the request of the District or as part of any audit of the District by the State Auditor, for a period of three years after final payment under the Contract. The examination and audit shall be confined to those matters connected with the performance of the Contract, including, but not limited to, the cost of administering the Contract.

P9.9.2 Defective Cost and Pricing Data. The following provisions govern the submission of defective cost and pricing data by the Supplier in connection with any request for payment under the Contract.

- (a) "Cost and pricing data" are those facts that prudent buyers or sellers would reasonably expect to have a significant effect on price negotiations at the time price agreement is reached.
- (b) In all cases where payment to the Supplier by the District, or the determination of a credit owed to the District by the Supplier, is based, in whole or in part, directly or indirectly, on the Supplier's submission of cost and pricing data to the District, the Supplier certifies that cost and pricing data are accurate, current, and complete as of the date of submission of the data. In addition, the Supplier shall, within seven Days of the date of price agreement, certify that cost and pricing data are accurate, current, and complete as of the date of such price agreement.
- (c) The Supplier is under a continuing duty until the time of price agreement to update such data if the submitted data is determined at any time to be inaccurate, not current, or incomplete.
- (d) If the Supplier submits data that do not comply with the requirements of Article P9.9 and such data results in an increase in amount of payment made to the Supplier by the District, the District may retroactively reduce such payment by the amount of the increase.
- (e) This remedy is in addition to, and not in lieu of, the remedies provided by Sections 12650, et seq. of the Government Code, pertaining to "False Claim Actions".
- (f) All costs, including those of Subsuppliers at any tier, submitted to the District for reimbursement, negotiation, or claim settlement shall be in accordance with the Cost Principles. For the purpose of reimbursing allowable costs, the term "costs" includes only: (1) those recorded costs that, at the time of the request for reimbursement, the Supplier has paid by cash, check or other form of actual payment for items or services purchased directly for the Contract; or (2) when the Supplier is not delinquent in paying costs of Contract performance in the ordinary course of business, costs incurred, but not necessarily paid for materials issued from the Supplier's inventory for use of the Contract, direct labor, direct travel, other direct in-house costs, properly allocable and allowable indirect costs recorded in the Supplier's records, and payments to

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Subsupplier under similar cost standards. Supplier contributions to any pension or other postretirement benefit, profit sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes provided that the Supplier pays the contribution to the fund within 30 Days after the close of the period covered. Payments made 30 Days or more after the close of a period shall not be included until the Supplier actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Supplier actually makes the payment.

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