

APPENDIX 2

DEVELOPER'S PROPOSAL COMMITMENTS

[PLACEHOLDER]

APPENDIX 3



PROJECT LEASE

FOR THE

PRESIDIO PARKWAY PROJECT

BETWEEN

CALIFORNIA DEPARTMENT OF TRANSPORTATION

AND

[XXXXXXXXXXXXXXXXXXXX]

CONTRACT # [XXXXXX]

DATED [XXXXXXX]

PROJECT LEASE

Presidio Parkway Project

This lease (the "Lease") is made and entered into as of _____, 20__, by and between the **CALIFORNIA DEPARTMENT OF TRANSPORTATION**, a public agency of the State of California ("Department"), and _____, a _____ ("Developer").

RECITALS

A. Department and Developer have entered into that Public-Private Partnership Agreement for the Presidio Parkway Project dated as of _____, 20__ (the "Agreement"). In the Agreement, to which a form of this lease constitutes Appendix 3, Department confers upon Developer certain rights to finance, develop, design, acquire, construct, operate and maintain the Project described therein.

B. Pursuant to the Agreement, Developer has constructed the Project on the Project Right of Way described below, to which entry and/or other rights necessary for construction of the Project were granted by Department to Developer pursuant to the Agreement.

C. Department intends to lease the Project and the Project Right of Way, subject to restrictions in Section 1.2, to Developer, and Developer desires to lease the Project and the Project Right of Way from Department, on the terms and conditions provided herein.

D. This Lease, together with all exhibits hereto, as originally executed or as it may from time to time be supplemented, modified or amended, is hereinafter referred to as the "Lease".

ARTICLE I

LEASE, PREMISES, TITLE AND TERM

Section 1.1 Lease of Premises. Department hereby leases, lets, demises and rents to Developer, and Developer hereby leases and rents from Department, all the real property described in Exhibit A attached hereto, together with all the improvements now or hereafter located thereon owned by Department, including the portion of the Project thereon, subject to the exclusions and reservations set forth in Section 1.2 (the "Premises"), in accordance with the terms described herein. Notwithstanding the foregoing, with respect to all portions of the Premises for which the Department holds an easement, right of entry, license or other property interest that is not a fee interest, this Lease constitutes only a licensing or sublicensing from the Department to Developer of the Department's property interest, and all words of lease, leasehold estate, possession or control set forth herein shall be deemed to be a licensing or sublicensing with respect to such portions of the Premises.

Section 1.2 Exclusions and Reservations.

(a) The Premises, and Developer's leasehold estate hereunder, specifically exclude any and all Airspace. There are hereby reserved to Department all rights to own, lease, sell, assign, transfer, utilize, develop or exploit the Airspace for purposes of pursuing Business Opportunities to the extent permitted under, and subject to the terms of, Section 20.2 of the Agreement; and Developer shall not engage in any activity respecting or infringing upon the Airspace. Department hereby reserves a non-exclusive easement over the Premises for access to and from the Airspace for development, maintenance, repair, replacement, operation, use and enjoyment of the Airspace for such purpose. (Airspace shall have the meaning provided in the Agreement.)

(b) Department reserves the right to enter upon, possess, control and utilize the Premises with or without payment of compensation to Developer to the extent and only to the extent specifically permitted in the Contract Documents.

(c) Department reserves the right to grant to other parties utility and other permits and easements and modifications thereto and rights of use to the extent and only to the extent provided in Sections 4.5.5 and 5.2.6 of the Agreement.

Section 1.3 Title. Fee title to the Premises, or other property interest obtained by Department in the Premises, as the case may be, is and at all times shall remain vested in Department, subject to Developer's leasehold estate under this Lease.

Section 1.4 Term.

(a) The term of this Lease shall commence upon the commencement of the Operating Period and shall continue until the earliest of (a) 30 years after the Baseline Substantial Completion Date, (b) 30 years after the Substantial Completion Date, or (c) the termination of the Agreement as provided therein.

(b) The term of this Lease is subject to earlier termination in accordance with the Agreement. Termination of the Agreement in accordance with its terms shall automatically result in termination of this Lease, as provided in Section 19.6 of the Agreement.

(c) Any extension of the term of the Agreement shall automatically extend the term of this Lease so that the expiration date of the term of each is the same.

(d) Developer agrees and acknowledges that neither the signing of this Lease nor its expiration or earlier termination for any reason shall entitle Developer to assistance under California relocation assistance statutes and regulations, and any amendments thereto, or under the Uniform Relocation and Assistance and Real Property Acquisition Policies Act, as amended, 42 U.S.C. Sections 4651 et seq. and any amendments thereto.

ARTICLE II

RENT, TAXES, OTHER CHARGES

Section 2.1 Rent. As consideration for the Premises, Developer shall perform its obligations under the Agreement throughout the Term.

Section 2.2 Taxes. The terms of the Agreement shall govern allocation of liability for imposition of any real property or possessory interest tax on Developer's interest in the Premises or any part thereof by any Governmental Entity.

Section 2.3 Other Charges. Department shall have no liability with respect to any water, electric, gas, lighting, heating, power and other utility charges accruing or payable in connection with Developer's use, construction, operation or maintenance of the Premises during the term of this Lease, other than as payable under the Agreement in connection with a Relief Event.

ARTICLE III

USE

Section 3.1 Use. During the term of this Lease, Developer shall use the Premises only for the purposes of performing the Work and holding the Project open and available for public use as a highway project. Developer's right to perform the Work and hold the Project open and available for public use during the term of this Lease is hereby specifically permitted, authorized and granted by Department. Such use shall be in accordance with and subject to the terms, provisions, conditions and limitations set forth in the Contract Documents.

Section 3.2 Mechanic's Liens.

(a) Developer acknowledges and agrees that neither Department nor Department's right, title and interest in and to the Project and Project Right of Way may or shall be subject to claims or liens for labor or materials in any way arising out of or relative to Developer's activities, including Design Work and Construction Work.

(b) In the event any lien for labor or materials is recorded upon Department's interest in the Premises, Developer shall, within 60 days after obtaining knowledge thereof:

(i) Record a valid release of lien;

(ii) Procure and record a bond in such form and amount and issued by such surety as is required by applicable Laws to release Department's interest in the Premises from the lien and from any action brought to foreclose the lien; or

(iii) Deposit with a third party escrow agent reasonably acceptable to Department sufficient cash to cover the amount of the subject lien claim, including interest and costs; under irrevocable, binding authorization and instructions for the escrow agent to pay out of such deposit to any subsequent judgment holder the amount of any judgment arising from litigation with regard to the subject lien. The giving of any contrary instructions by Developer shall be strictly prohibited and constitute a default by Developer hereunder.

ARTICLE IV

ASSIGNMENT, SUBLETTING AND CHANGE IN CONTROL

Section 4.1 Assignment by Developer.

(a) Developer shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber its interests in this Lease or the Premises except to the extent specifically permitted under Article 23 of the Agreement.

(b) Developer shall not sublease, sublicense or grant any other special occupancy or use of the Premises to any other Person except to the extent specifically permitted under Article 23 of the Agreement.

(c) Developer shall not voluntarily or involuntarily cause, permit or suffer any Equity Transfer or Change of Control except to the extent specifically permitted under Section 13.1 of the Agreement.

(d) Any sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, and any Equity Transfer or Change of Control, in violation of this provision shall be null and void *ab initio* and the Department, at its option, may declare any such attempted action to be a Developer Default.

Section 4.2 Assignment by Department. Department may transfer and assign its rights, title and interests in the Agreement, this Lease and other Contract Documents as provided in Section 23.3 of the Agreement.

Section 4.3 Notice and Assumption. Assignments and transfers of Developer's Interest or the Department's interest permitted under this Article IV or otherwise approved in writing by the Department or Developer, as applicable, shall be effective only upon receipt by the non-assigning Party of written notice of the assignment or transfer and a written instrument executed by the transferee, in form and substance reasonably acceptable to the non-assigning Party, in which the transferee, without condition or reservation, assumes all of Developer's or the Department's (as the case may be) obligations, duties and liabilities under this Lease.

ARTICLE V

ENCUMBRANCE AND LENDER RIGHTS

Section 5.1 Funding Agreements and Security Documents. The rights of Developer to mortgage, pledge, hypothecate, deed in trust or assign to any Lender Developer's interest in the leasehold estate created by this Lease, are set forth in, and subject to the terms and conditions of, Article 15 of the Agreement.

Section 5.2 Lenders' Rights. Any Lender that holds a Funding Agreement and Security Document and satisfies the conditions and limitations set forth in Section 12.1 of the Agreement shall have and retain the rights specified in Article 12 of the Agreement and in the Direct Agreement, which rights, including Lender third party beneficiary rights, are, without duplication, applicable to this Lease.

ARTICLE VI

QUIET ENJOYMENT

Section 6.1 Quiet Enjoyment. Except as expressly provided otherwise by, and subject to all the terms and conditions of, this Lease and the other Contract Documents, Department covenants that (a) Developer may quietly and peaceably hold, occupy, use and enjoy the Premises for the Term without ejection or interference by Department or any Person claiming by, through or under Department, and (b) Department will protect and defend Developer's right to possession, control and operation of the Premises as provided in this Lease and Contract Documents against the claims of any Person claiming by, through or under Department.

Section 6.2 Right of Entry. Developer shall permit Department and its authorized agents, employees, representatives, contractors and subcontractors to enter upon the Premises for any purpose relating to Department's rights or obligations under the Contract Documents or under any other circumstances specified in this Lease and/or the other Contract Documents, including but not limited to the following:

(a) Entry upon the Premises to monitor, inspect and audit the same and Developer's activities as provided in the Contract Documents; and

(b) Department's right to enter upon the Premises in the exercise of any of its remedies under of the Agreement or upon effective termination of the Agreement.

No such exercise of the right of entry or loss of use of the Premises by reason thereof shall be compensable, except to the extent of any compensation that may be owing pursuant to the Agreement due to a Relief Event or Termination Compensation that may be owing pursuant to the Agreement.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.1 Events of Default. The events constituting a default of Developer under this Lease shall consist of:

(a) Failure by Developer to timely pay to Department monies due and payable to Department under this Lease;

(b) Failure by Developer to observe and perform any covenant, term or condition required to be observed or performed by Developer under this Lease; and

(c) Each and every other Developer Default set forth in Section 18.1.1 of the Agreement.

For each of the above events constituting a default of Developer under this Lease, Developer shall be entitled to notice of default and opportunity thereafter to cure to the extent provided in the Agreement.

Section 7.2 Remedies of Department. Department's rights and remedies with respect to any default by Developer under this Lease shall be exclusively governed by the

Agreement. In no event shall Department have the right to terminate this Lease prior to termination of the Agreement in accordance with its terms.

Section 7.3 No Double Recovery. The double counting of a remedy because a default is simultaneously a default under this Lease and the Agreement is contrary to the intent of the Parties.

ARTICLE VIII

SURRENDER ON TERMINATION

Section 8.1 Surrender. On the Termination Date, this Lease shall terminate and Developer shall surrender possession and control of the Premises to Department in accordance with all provisions of the Contract Documents, including but not limited to Sections 5.9 and 5.10 and Article 19 of the Agreement.

Section 8.2 Extinguishment of Interests.

(a) Expiration of the Term shall automatically cause, as of the expiration date, the complete reversion to the Department, and cessation, of the Developer's Interest, at no charge to the Department, but subject to Section 19.6.4.6 of the Agreement and without prejudice to any Claim of liability pursuant to Section 19.8.3 of the Agreement.

(b) Early termination of this Lease and the Agreement shall automatically cause, as of the Termination Date, the complete reversion to the Department, and cessation, of the Developer's Interest, except for its right to Termination Compensation.

(c) Automatically upon either such reversion and cessation of Developer's Interest, the Project and the Premises shall be and remain free and clear of any lien, encumbrance or other claim of record created, permitted or suffered by Developer or anyone claiming by, through or under Developer, including the liens, pledges, assignments, collateral assignments, security interests and encumbrances of any and all Financing Documents. In order to confirm the foregoing, at the Department's request, Developer shall promptly obtain and deliver to the Department reconveyances, releases and discharges of all Security Documents, executed by the Lenders in proper form for recording or filing (as appropriate), but no such reconveyances, releases and discharges shall be necessary to the effectiveness of the foregoing.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Relationship of Parties. The relationship of Developer to Department under this Lease shall be one of lessee to lessor, or licensor to licensee, as applicable, and not of agent, partner, joint venturer or employee; and Department shall have no rights to direct or control the activities of Developer or any Developer-Related Entity. Officials, employees and agents of Department, including its Authorized Representative, shall in no event be considered employees, agents, partners or representatives of Developer or any Lender.

Section 9.2 Waiver. All the provisions respecting waiver of rights, obligations and remedies set forth in Section 25.2 of the Agreement are hereby incorporated herein by reference and made a part hereof.

Section 9.3 Third Parties. Nothing in the provisions of this Lease is intended to create duties or obligations to or rights in third parties not a party to this Lease, except for Lenders to the extent provided herein and in the Agreement, or to affect the legal liability of either Party by imposing any standard of care respecting duties and obligation different from the standard of care imposed by Law.

Section 9.4 Notices. All notices, authorizations and other communications required under this Lease between Department and Developer shall be given as provided in Section 25.9 of the Agreement.

Section 9.5 Agreement Controls. The provisions of the Agreement shall apply to this Lease in the same manner as to the Agreement and are incorporated herein by reference. All capitalized terms used but not defined herein shall have the respective meanings given them in the Agreement.

Section 9.6 Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of Department and Developer and their permitted successors, assigns and legal representatives.

Section 9.7 No Brokers. Each Party represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Lease.

Section 9.8 Disputes and Governing Law and Venue. All Claims and Disputes arising under this Lease shall be resolved according to Article 24 of the Agreement. This Lease shall be governed and construed in accordance with the laws of the State of California applicable to contracts executed and to be performed within such State.

Section 9.9 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 9.10 Severability. If any term or provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by either Party hereunder, shall be held to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by Law. The Parties intend and agree that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, the dispute resolution body shall supply as a part of this Lease an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Lease in two original counterparts on the date first written above.

Department

**CALIFORNIA DEPARTMENT OF
TRANSPORTATION**

By: _____
Name: _____
Title: _____

DEVELOPER

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPENDIX 4

MILESTONE PAYMENTS AND MILESTONE PAYMENT ADJUSTMENT

SECTION 4A – Milestone Payment Amount

(a) The Milestone Payment Amount shall be:

$$\text{Milestone Payment Amount} = MP - \text{Lesser of (MPAC) or (MPA + MPD)}$$

Where:

- MP = The amount of the Milestone Payment which shall be \$173,430,000
- MPAC = The amount of the Milestone Payment Adjustment Cap which shall be \$3,000,000
- MPA = the Milestone Payment Adjustment as determined in accordance with Section 4B below
- MPD = all Milestone Payment Deductions and offsets allowed under Sections 4.3.1, 4.12.2, 4.13.2.1, 7.6.1, 16.1.2.2 and 18.2.5.2 of the Agreement

(b) If the sum of the Milestone Payment Adjustment and Milestone Payment Deductions is greater than the Milestone Payment Adjustment Cap, the Milestone Payment Adjustment Excess shall be:

$$\text{Milestone Payment Adjustment Excess} = MPA + MPD - MPAC$$

SECTION 4B- Milestone Payment Adjustment

(a) The Milestone Payment Adjustment, MPA, shall be determined in accordance with the following formula:

$$MPA = \sum_{x=1}^n \left(CNCAdjustment_x \times \frac{CPI_y}{CPI_{Base}} \right)$$

Where:

- $CNCAdjustment_x$ is the Construction Noncompliance Adjustment related to the Construction Noncompliance Event x which occurred during Fiscal Year y between NTP2 and the Substantial Completion Date, as determined by reference to Table 4.1 in Section 4 of Division II.
- n = the total number of O&M Noncompliance Events occurring between NTP2 and the Substantial Completion Date
- CPI_y is the CPI in Fiscal Year y

- $CPI_{Base} = \text{CPI for the base year 2010}$
- (b) The assignment of Noncompliance Points with respect of each Construction Noncompliance Event shall be undertaken in accordance with Section 4 of Division II of the Technical Requirements.

APPENDIX 5

RIGHT OF WAY PLANS

[PLACEHOLDER]

APPENDIX 6

EXTRA WORK COSTS AND DELAY COSTS SPECIFICATIONS

1. EXTRA WORK COSTS

At the sole discretion of the Department, Extra Work Costs shall be determined based either on (a) a negotiated lump sum, or (b) force account.

1.1 Negotiated Lump Sum

1.1.1 Lump sum Extra Work Costs shall be negotiated based on estimated costs of:

1.1.1.1 Labor;

1.1.1.2 Material;

1.1.1.3 Equipment;

1.1.1.4 Third party fees and charges (e.g. permit fees, plan check fees, review fees and charges);

1.1.1.5 Extra insurance costs and extra costs of bonds and letters of credit;

1.1.1.6 Other direct costs, and

1.1.1.7 A reasonable contingency for Developer risk associated with the lump sum pricing.

1.1.2 Lump sum Extra Work Costs also shall include a reasonable, negotiated markup for Contractor indirect costs, overhead and profit and Developer indirect costs and overhead. The negotiated lump sum shall not include any home office overhead of Developer or its Contractors or any markup on Contractor or Developer direct or indirect costs for Developer profit. Such indirect costs shall exclude cost of funds (whether debt or equity), and Lender charges, damages and penalties, which are not allowable as Extra Work Costs.

1.1.3 The price of a negotiated lump-sum for Extra Work Costs shall be based on the original allocations of pricing to comparable activities, materials and equipment, as indicated in Appendices 2-G(3) and 2-I and other sources of original pricing information (such as the Original Financial Model), whenever possible. If requested by the Department, price negotiations for lump-sum Extra Work Costs shall be on an Open Book Basis.

1.1.4 In pricing any negotiated lump sum for Extra Work Costs, Developer shall include sales or use taxes only on such portion of the Extra Work Costs that does not qualify for exemption under applicable Law.

1.2 Force Account

When Extra Work Costs are determined on a force account basis, Developer will be compensated for the direct costs of labor, materials and equipment used in performing the Extra Work, plus markup for indirect costs, overhead and profit. The direct costs of labor, materials and equipment shall be determined as set forth in Sections 1.2.1 below (“Labor”), 1.2.2 below (“Materials”), and 1.2.3 below (“Equipment Rental”), respectively. Markup for overhead and profit shall be determined as set forth in Section 1.2.4 below (“Costs of Delay, Indirect Costs, Overhead and Profit”).

1.2.1 Labor

1.2.1.1 Extra Work Costs shall include the cost of labor for workers used in the actual and direct performance of the Extra Work. Workers include foremen actually engaged in the performance of the Extra Work. Workers do not include project supervisory personnel or necessary on-site clerical staff, except when the Extra Work is a Controlling Work Item and the performance of such Extra Work actually delays Work on the Critical Path due to no fault of Developer. In such a case, compensation for project supervisory personnel, but in no case higher than a Project Manager’s position, shall only be for the pro-rata time such supervisory personnel spend on the Extra Work. In no case shall an officer or director of Developer, an Affiliate or any Contractor, nor those persons who own more than one percent of Developer, an Affiliate or any Contractor, be considered as project supervisory personnel, direct labor or foremen hereunder.

1.2.1.2 For workers who are not project supervisory personnel, the cost of labor, whether the employer is Developer, an Affiliate, or a Contractor, will be the sum of the following:

(a) Actual Wages

The actual wages paid shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation and similar purposes.

(b) Labor Surcharge

A labor surcharge, added to the actual wages as set forth in Section 1.2.1.2(a) above. The labor surcharge shall be as set forth in the Department’s publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the Extra Work is accomplished. The labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workers, other than actual wages as defined in Section 1.2.1.2(a) above and subsistence and travel allowance as specified in Section 1.2.1.2(c) below.

(c) Subsistence and Travel Allowance

The actual subsistence and travel allowance paid to the workers.

1.2.2 Materials

1.2.2.1 Department-Furnished Materials

The Department reserves the right to furnish any materials it deems advisable, and Developer shall have no claim for costs and markup on those materials.

1.2.2.2 Developer-Furnished Materials

Only materials furnished by Developer and necessarily used in the performance of the Extra Work may be included in Extra Work Costs. The cost of those materials will be the cost to the purchaser—whether the purchaser is Developer, an Affiliate, or a Contractor—from the Supplier thereof, except as the following are applicable:

(a) Discounts

If a cash or trade discount by the actual Supplier is offered or available to the purchaser, it shall be credited to the Department notwithstanding the fact that the discount may not have been taken.

(b) Non-direct Purchases

If materials are procured by the purchaser by any method which is not a direct purchase from a direct billing by the actual Supplier to the purchaser, the cost of those materials shall be deemed to be the price paid to the actual Supplier as determined by the Department plus the actual costs, if any, incurred in the handling of the materials.

(c) Purchaser-supplied Materials

If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of those materials shall not exceed the price paid by the purchaser for similar materials furnished from that source on contract items or the current wholesale price for those materials delivered to the Site, whichever price is lower.

(d) Excessive Costs

If the cost of the materials is, in the opinion of the Department, excessive, then the cost of the material shall be deemed to be the lowest current wholesale price at which the materials were available in the quantities concerned delivered to the Site, less any discounts as provided in Section 1.2.2.2(a) above.

(e) Evidence of Cost

If Developer does not furnish satisfactory evidence of the cost of the materials from the actual Supplier thereof within 60 days after the date of delivery of the materials or within 15 days after the acceptance of the contract with the Supplier, whichever occurs first, the Department reserves the right to establish the cost of the materials at the lowest current wholesale prices at which the materials were available in the quantities concerned delivered to the location of the Extra Work, less any discounts as provided Section 1.2.2.2(a) above.

1.2.3 Equipment Rental

1.2.3.1 General Equipment Rental Provisions

(a) Extra Work Costs for the use of equipment shall be determined at the rental rates listed for that equipment in the Department's publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the Extra Work is accomplished, regardless of ownership and any rental or other agreement, if they may exist, for the use of that equipment entered into by Developer or any Contractor; provided that for those pieces of equipment with a rental rate of \$10.00 per hour or less as listed in the Labor Surcharge And Equipment Rental Rates publication and which are rented from a local equipment agency, other than Developer- owned or Affiliate-owned, Extra Work Costs for use of the equipment shall be determined at the hourly rate shown on the rental agency invoice or agreement for the time used on force account work as provided in Section 1.2.3.2 below ("Equipment on the Site"). If a minimum equipment rental amount is required by the local equipment rental agency, Extra Work Costs shall be determined at the actual amount charged. The \$10 figure shall be adjusted annually on July 1 of each year of the Term by the percentage increase, if any, in the CPI since the previous July 1.

(b) If the Department concurs that it is necessary to use equipment not listed in the Labor Surcharge And Equipment Rental Rates publication, a suitable rental rate for that equipment will be established by the Department. Developer may furnish any cost data which might assist the Department in the establishment of the rental rate. If the rental rate established by the Department is \$10.00 per hour or less, the provisions above concerning rental of equipment from a local equipment agency shall apply. The \$10 figure shall be adjusted annually on July 1 of each year of the Term by the percentage increase, if any, in the CPI since the previous July 1.

(c) The rental rates as provided above shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals.

(d) The cost of labor for operators of rented equipment shall be determined as provided in Section 1.2.1 above ("Labor").

(e) For costs of equipment to be eligible for Extra Work Costs, the equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.

(f) Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

(g) Extra Work Costs exclude the costs of small tools. Individual pieces of equipment or tools not listed in the Labor Surcharge and Equipment Rental Rate publication and having a replacement value of \$500 or less, regardless of whether consumed by use, shall be considered to be small tools ineligible for Extra Work Cost compensation. The \$500 figure shall be adjusted annually on July 1 of each year of the Term by the percentage increase, if any, in the CPI since the previous July 1.

(h) Rental time will not be allowed while equipment is inoperative due to breakdowns.

1.2.3.2 Equipment on the Site

(a) The rental time to be included in Extra Work Costs for equipment on the Site shall be the time the equipment is in operation on the Extra Work being performed, and in addition, shall include the time required to move the equipment to the location of the Extra Work and return the equipment to the original location or to another location requiring no more time than that required to return the equipment to its original location, except that moving time is not includable in Extra Work Costs if the equipment is used at the site of the Extra Work on other than the Extra Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no loading and transporting costs will be allowed if the equipment is used at the site of the Extra Work on other than the Extra Work.

(b) The following shall be used in computing the rental time of equipment on the Site:

1. (1) When hourly rates are listed, less than 30 minutes of operation shall be considered to be 0.5 hour of operation.

2. (2) When daily rates are listed, less than 4 hours of operation shall be considered to be 0.5 day of operation.

1.2.3.3 Equipment Not on the Site

For the use of equipment moved onto the Site from elsewhere to perform Extra Work and used exclusively for Extra Work, the force account Extra Work Costs shall be determined at the rental rates listed in the Department's publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the Extra Work is accomplished, or, at the Department's election, determined as provided in Section 1.2.3.1 above ("General Equipment Rental Provisions") and at the cost of transporting the equipment to the location of the Extra Work and its return to its original location, all in accordance with the following provisions:

(a) The original location of the equipment to be hauled to the location of the Extra Work shall be subject to the Department's prior approval.

(b) The Extra Work Costs will include the costs of loading and unloading the equipment.

(c) The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers.

(d) The rental period shall begin at the time the equipment is unloaded at the site of the Extra Work, shall include each day that the equipment is at the site of the Extra Work, excluding Saturdays, Sundays and legal holidays unless the equipment is used to perform the Extra Work on those days, and shall terminate at the end of the day on which the use of the equipment ceases. The rental time per day allowable as Extra Work Costs will be in accordance with the following:

1. (1) Hours includable in Extra Work Costs shall be determined as follows:

2.

Hours Equipment is in Operation	Hours Includable in Extra Work Costs
0	4
0.5	4.25
1	4.5
1.5	4.75
2	5
2.5	5.25
3	5.5
3.5	5.75
4	6
4.5	6.25
5	6.5
5.5	6.75
6	7
6.5	7.25
7	7.5
7.5	7.75
8	8
Over 8	hours in operation

1. (2) The hours includable in Extra Work Costs for equipment which is operated less than 8 hours due to breakdowns, shall not exceed 8 less the number of hours the equipment is inoperative due to breakdowns.

2. (3) When hourly rates are listed, less than 30 minutes of operation shall be considered to be 0.5 hour of operation.

3. (4) When daily rates are listed, 0.5 day will be includable in Extra Work Costs if the equipment is not used. If the equipment is used, one day is includable in Extra Work Costs.

4. (5) The minimum rental time to be paid for the entire rental period on an hourly basis shall not be less than 8 hours or if on a daily basis shall not be less than one day.

(e) Should Developer desire the return of the equipment to a location other than its original location, the Department will pay the cost of transportation in accordance with the above provisions, provided the payment shall not exceed the cost of moving the equipment to the Extra Work.

(f) Costs of transporting, and loading and unloading equipment, as above provided, will not be allowed as Extra Work Costs if the equipment is used in any way in addition to or other than upon Extra Work accounted for on a force account basis.

1.2.3.4 Owner-Operated Equipment

When owner-operated equipment is used to perform Extra Work, the force account Extra Work Costs for the equipment and operator shall be determined as follows:

(a) Extra Work Costs for the equipment will be determined in accordance with Section 1.2.3.1 above ("General Equipment Rental Provisions");

(b) Extra Work Costs for labor and subsistence or travel allowance will be determined at the rates paid by Developer to other workers operating similar equipment already on the Site or, in the absence of other workers operating similar equipment, at the rates for that labor established by collective bargaining agreements for the type of workers and location of the work, regardless of whether the owner operator is actually covered by an agreement. A labor surcharge will be added to the cost of labor described herein, in accordance with Section 1.2.1.2(b) above ("Labor Surcharge"); and

(c) To the direct cost of equipment rental and labor, computed as provided herein, there will be added the markups for equipment rental and labor as provided in Section 1.3.3 below ("Overhead and Profit").

1.2.3.5 Dump Truck Rental

Dump truck rental shall conform to the provisions in Section 1.2.3.1 above ("General Equipment Rental Provisions"), Section 1.2.3.2 above ("Equipment on the Site") and Section 1.2.3.3 above ("Equipment Not on the Site"), except as follows:

(a) Force account Extra Work Costs for fully maintained and operated rental dump trucks used in the performance of Extra Work shall be determined at the same hourly rate paid by Developer for use of fully maintained and operated rental dump trucks in performing the Work;

(b) In the absence of Work requiring dump truck rental, the Department will establish an hourly rental rate for determining the Extra Work Costs of fully maintained and operated rental dump trucks. Developer shall provide the Department with complete information on the hourly rental rates available for rental of fully maintained and operated dump trucks;

(c) The provisions in Section 1.2.1 above ("Labor") shall not apply to operators of rented dump trucks;

(d) The rental rates listed for dump trucks in the Department's publication entitled Labor Surcharge And Equipment Rental Rates shall not apply;

(e) To the total of the rental costs for fully maintained and operated dump trucks, including labor, there will be added a markup in accordance with Section 1.2.4 below ("Costs of Delay, Indirect Costs, Overhead and Profit"); and

(f) The provisions in Section 1.2.3.4 above ("Owner Operated Equipment") shall not apply to dump truck rentals.

1.2.4 Costs of Delay, Indirect Costs, Overhead and Profit

1.2.4.1 Contractor Markups for Delay, Indirect Costs, Overhead and Profit

(a) To the total direct costs of a Contractor's labor, materials, and equipment other than rented dump trucks, there will be added a markup of 33 percent to the Contractor's cost of labor; 15 percent to the Contractor's cost of materials; and 15 percent to the Contractor's cost of equipment. To the total of the rental costs for fully maintained and operated dump trucks, including labor, there will be added a markup of 15 percent; there will be no separate markup for labor. These markups shall constitute full compensation for all the Contractor's costs of delay, indirect costs, overhead costs and profit associated with the Extra Work, which shall be deemed to include all expense items not specifically designated as direct costs of labor in Section 1.2.1 above, materials in Section 1.2.2 above, and equipment in Section 1.2.3 above. Such expense items include third party fees and charges (e.g. permit fees, plan check fees, review fees and charges, extra insurance costs, and extra costs of bonds and letters of credit). Such expense items exclude cost of funds (whether debt or equity), and Lender charges, damages and penalties, which are not allowable as Extra Work Costs.

(b) The Department will not pay any markup for the Lead Contractor or any other Prime Contractor where it subcontracts labor, materials or equipment for Extra Work to a Contractor at a tier lower than the Lead Contractor or other prime Contractor. However, payment to the Lead Contractor or other prime Contractor for a markup on such subcontracted Extra Work may be obtained from Developer (see Section 1.2.4.2(a) below).

1.2.4.2 Developer Markups for Delay, Indirect Costs and Overhead

(a) The Department will pay Developer, for distribution as Developer deems appropriate, a 5 percent markup on the total direct costs of labor, materials, and equipment for the Extra Work performed by a Contractor at any tier (but before any Contractor markups thereon).

(b) There will be added a markup of 23 percent to the total direct cost of Developer's own labor; 5 percent to the total direct cost of Developer's own materials; and 5 percent to the total direct cost of Developer's own rental of equipment. To the total of the rental costs paid directly by Developer for fully maintained and operated dump trucks, including labor, there will be added a markup of 5 percent; there will be no separate markup for labor.

(c) These markups shall constitute the full compensation for all Developer's costs of delay, indirect costs and overhead costs associated with the Extra Work, which shall be deemed to include all expense items not specifically designated as direct costs of labor in Section 1.2.1 above, materials in Section 1.2.2 above, and equipment in Section 1.2.3 above. Such expense items include third party fees and charges (e.g. permit fees, plan check fees, review fees and charges, extra insurance costs, and extra costs of bonds and letters of credit). Such expense items exclude cost of funds (whether debt or equity), and Lender charges, damages and penalties, which are not allowable as Extra Work Costs.

(d) There shall be paid no markup on the total or any portion of the direct or indirect costs of Developer or its Contractors for Developer profit.

1.2.4.3 No Charge or Markup for Home Office Overhead

There shall be no home office overhead added for Developer or any of its Contractors.

1.2.5 Affiliate Extra Work Costs

1.2.5.1 The direct costs of an Affiliate's labor, materials, and equipment used in performing Extra Work shall be limited in accordance with Section 7.5.1.4 of this Agreement.

1.2.5.2 If an employee or worker of an Affiliate engages in work or tasks that duplicate or repeat work or tasks being performed by an employee or worker of Developer, then none of the Affiliate's labor costs respecting the duplicated or repeated work or tasks shall be allowed as Extra Work Costs.

2. DELAY COSTS

Delay Costs shall be determined as follows:

2.1 Direct Cost of Idle Labor

Compensation for the direct cost of the actual idle time of labor will be determined in the same manner as provided in Section 1.2.1 above ("Labor").

2.2 Direct Cost of Idle Equipment

Compensation for the direct cost of the actual idle time of equipment will be determined in the same manner as determinations are made for force account Extra Work Costs for equipment used in the performance of Extra Work, as provided in Section 1.2.3 above ("Equipment Rental"), with the following exceptions:

2.2.1 If the Delay Cost is attributable to the Relief Event set forth in clause (h) of the definition of Relief Event (Department's failure to make available Project Right of Way), then the right of way delay factor for each classification of equipment shown in the Department's publication entitled Labor Surcharge And Equipment Rental Rates will be applied to that equipment rental rate;

2.2.2 The Delay Costs will be determined for the actual normal working time during which the Delay condition exists, but in no case will exceed 8 hours in any one day; and

2.2.3 The Delay Costs will be determined for the calendar days, excluding Saturdays, Sundays and legal holidays, during the existence of the Delay, except that when Extra Work Costs for rental of equipment are accruing under the provisions in Section 1.2.3.3 above ("Equipment Not on the Site "), Delay Costs shall not include equipment rental costs for equipment not located on the Site.

2.3 Indirect Costs, Expenses, and Profit

2.3.1 Where Delay is to Controlling Work Item

In the case of a Relief Event Delay, Delay Costs shall include the following percentage markups, which shall constitute full compensation for all indirect delay costs (including delay overhead costs), delay expenses and delay profit related to such Relief Event Delay:

2.3.1.1 The percentage markups for the direct costs of a Contractor's labor and equipment set forth in Section 1.2.4.1(a) above ("Costs of Delay, Indirect Costs, Overhead and Profit") as applied to the Contractor's costs of idle time of labor and equipment as determined under Sections 2.1 above ("Direct Costs of Idle Labor") and 2.2 above ("Direct Costs of Idle Equipment"); and

2.3.1.2 The percentage markups for the direct costs of Developer's labor and equipment set forth in Section 1.2.4.2(b) above ("Costs of Delay, Indirect Costs, Overhead and Profit") as applied to Developer's costs of idle time of labor and equipment as determined under Sections 2.1 above ("Direct Costs of Idle Labor") and 2.2 above ("Direct Costs of Idle Equipment"). There shall be no added markup to Developer's or any Contractor's cost of idle time of labor and equipment for Developer profit.

2.3.1.3 Such markups exclude cost of funds (whether debt or equity), and Lender charges, damages and penalties, which are not allowable as Delay Costs.

2.3.2 Where Delay is to Non-Controlling Work Item

If the Delay is to a non-Controlling Work Item, then no indirect costs and expenses, and no profit, of Developer or any Contractor are allowable as Delay Costs.

2.3.3 Home Office Idled Labor and Equipment

There shall be no home office costs of idled labor or idled equipment added for Developer or any of its Contractors.

APPENDIX 7

PAYMENT MECHANISM

SECTION 1 – DEFINITIONS

Capitalized terms used in this Appendix 7 shall have the respective meanings given to them in Appendix 1 of this Agreement.

SECTION 2 - AVAILABILITY PAYMENT

2.1 Annual Maximum Availability Payment

MAP_y is the Maximum Availability Payment for Fiscal Year y indexed for inflation according to the following formula:

$$MAP_y = MAP_{Base} \times Escalation_y$$

Where:

MAP_{Base} = the Base Maximum Availability Payment of \$_____, subject to adjustment as set forth in Sections 15.2.8 and 15.2.9 of this Agreement

Escalation_y = escalation factor for Fiscal Year y

2.2 Escalation Factor

The escalation factor for any Fiscal Year y will be calculated using the following formula:

Where y ≤ 2014:

$$Escalation_y = 1$$

Where y > 2014:

$$Escalation_y = m_{cap} + \left((1 - m_{cap}) \times \frac{CPI_y}{CPI_{2014}} \right)$$

Where

- m_{cap} = the proportion of the Availability Payment that is associated with the bidder's cost base that is not subject to movements in indexation and defined as 85% in this Agreement
- CPI_y = CPI as at July 1 of Fiscal Year y
- CPI₂₀₁₄ = CPI as at July 1, 2014

2.3 Quarterly Payment

The Quarterly Payment with respect to any Quarter q for the period after the Substantial Completion Date shall be calculated using the following formula:

$$QAP_{q,y} = \left(\frac{d_{qy}}{d_y} \right) \times MAP_y - QPA_{q,y}$$

Where:

$QAP_{q,y}$ = the Quarterly Payment for Quarter q in Fiscal Year y

$QPA_{q,y}$ = the Quarterly Payment Adjustment for Quarter q in Fiscal Year y

d_{qy} = the number of days in Quarter q in Fiscal Year y :

- from the later of the start of the Quarter q and the Substantial Completion Date; and
- to the earlier of the end of Quarter q and the Termination Date.

d_y = the number of days in Fiscal Year y

SECTION 3 – CALCULATION OF PAYMENT ADJUSTMENTS

3.1 Quarterly Payment Adjustment

The Quarterly Payment Adjustment (QPA) for any Quarter q for the period after the Substantial Completion Date shall be calculated as follows:

$$QPA_{q,y} = QUA_{q,y} + QNA_{q,y} + QMPAE_{q,y}$$

Where:

$QPA_{q,y}$ = Quarterly Payment Adjustment for Quarter q in Fiscal Year y

$QUA_{q,y}$ = Quarterly Unavailability Adjustment for Quarter q in Fiscal Year y

$QNA_{q,y}$ = Quarterly O&M Noncompliance Adjustment for Quarter q in Fiscal Year y

$QMPAE_{q,y}$ = Quarterly Milestone Payment Adjustment Excess in Quarter q of Fiscal Year y

3.2 Quarterly Unavailability Adjustment

The Quarterly Unavailability Adjustments (QUA) for each Unavailability Event in Quarter q for the period after the Substantial Completion Date shall be calculated as follows:

$$QUA_{q,y} = \sum_{e=1}^q UA_e$$

Where $QUA_{q,y}$ = Quarterly Unavailability Adjustment for the Quarter q in Fiscal Year y with respect to each Unavailability Event e that occurs during the Quarter

$$UA_e = \sum_{h=1}^h \left(UF_{h,td} \times \frac{MAP_y}{(d_y \times 24)} \right)$$

Where:

UA_e = Unavailability Adjustment with respect to each Unavailability Event e that occurs during the Quarter

$UF_{h,td}$ = Unavailability Factor for each hour h and Travel Direction td in which each Unavailability Event e occurs

d_y = the number of days in Fiscal Year y

3.3 Unavailability Factors

- (a) Each Unavailability Event shall be deemed to have commenced from the moment such Unavailability Event actually begins. If the starting time of such Unavailability Event is unknown, such Unavailability Event shall be deemed to have started the earlier of the moment it was (a) discovered by Developer or (b) reported to Developer by the Department or by a third party. Each Unavailability Event shall be deemed to persist during each hour thereafter until such Unavailability Event is resolved. An Unavailability Event occurring at anytime during an hour shall be deemed to have started at the beginning of the hour, and an Unavailability Event that ends at anytime during an hour shall be deemed to have ended at the end of that hour.
- (b) Each Unavailability Event will be described by an Unavailability Factor for the given hour with respect to the Travel Direction in which the Unavailability Event occurs, in accordance with Table 1, below.

Table 1: Unavailability Factors

Segment	Lanes Closed	North- or Southbound (Weekdays)			North- or Southbound (Weekends)		
		High Priority Hours (07.00-11.00 (SB), 16.00-19.00(NB))	Mid Priority Hours (11.00-16.00, 19.00-21.00, 06.00-07.00, 07.00-11.00(NB), 16.00-19.00(SB))	Low Priority Hours (21.00-06.00)	High Priority Hours (12.00-19.00)	Mid Priority Hours (09.00-12.00, 19.00-21.00)	Low Priority Hours (21.00-09.00)
Segments 5 lanes in each direction	1	0.10	0.07	0.02	0.09	0.07	0.01
	2	0.39	0.26	0.06	0.37	0.27	0.08
	3	0.69	0.46	0.10	0.64	0.48	0.14
	4	2.16	1.45	0.32	2.01	1.51	0.43
	5	12.00	12.00	6.20	12.00	12.00	8.23
Segments 4 lanes in each direction	1	0.10	0.07	0.02	0.10	0.10	0.02
	2	0.69	0.46	0.10	0.60	0.50	0.14
	3	2.16	1.45	0.32	2.00	1.50	0.43
	4	12.00	12.00	5.27	12.00	12.00	6.99
Segments with up to 3 lanes in each direction	1	0.18	0.12	0.03	0.20	0.10	0.04
	2	0.64	0.43	0.10	0.60	0.40	0.13
	3	12.00	12.00	5.03	12.00	12.00	6.67
1-Lane Ramps	1	0.80	0.54	0.12	0.70	0.60	0.16
2-Lane Ramps	1	0.40	0.27	0.06	0.40	0.30	0.08
	2	0.80	0.54	0.12	0.70	0.60	0.16
All crossroads, either direction	1	0.40	0.27	0.06	0.40	0.30	0.08
	2	0.80	0.54	0.12	0.70	0.60	0.16

(c) When no Unavailability Event occurs, the hourly Unavailability Factor is 0.00.

(d) An Unavailability Event, the duration of which spans portions of two or more hours, shall be treated as multiple, separate Unavailability Events, one within each hour or portion thereof.

- (e) If two or more Unavailability Events occur concurrently in the same Travel Direction and within half a mile of each other in the same hour, only the greater of the relevant Unavailability Adjustments relating to the respective Unavailability Events, and resulting from the application of the formula set out in Section 3.2 of this Appendix, shall be included in the calculation of the Quarterly Unavailability Adjustment.
- (f) Developer will not permit the occurrence of an Unavailability Event in any Travel Direction that involves the closure of all lanes on any part of the road at any time. If an Unavailability Event occurs on any part of the road in any Travel Direction that involves the closure of all lanes, the road will be deemed unavailable for that day in that Travel Direction and the Unavailability Adjustment shall be calculated accordingly using the factors in Table 1.
- (g) Notwithstanding Section 3.3(f) above, the total Unavailability Adjustment with respect to any month m in the relevant Quarter q shall be:

$$UA_{m,q} = \text{Min} \left(\sum_{e=1}^{e,d} UA_e, \frac{MAP_y}{12} \right)$$

- (h) For clarity, no Unavailability Adjustment shall be calculated with respect to any Permitted Closure.
- (i) The Unavailability Adjustment with respect to an Unavailability Event that first occurs during a period of step-in by the Department shall be as provided in Section 6.6.1.5 of this Agreement. The Unavailability Adjustment with respect to an Unavailability Event that is the direct result of a Relief Event shall be as provided in Section 9.2.4 of this Agreement.

3.4 Quarterly O&M Noncompliance Adjustment

- (a) The Quarterly O&M Noncompliance Adjustment, $QNA_{q,y}$, with respect to each O&M Noncompliance Event in Quarter q and Fiscal Year y after the Substantial Completion Date, shall be determined in accordance with the following formula:

$$QNA_{q,y} = \frac{CPI_y}{CPI_{Base}} \times \sum_{x=1}^n NCA_{Adjustment}_x$$

Where:

$NCA_{Adjustment}_x$ is the O&M Noncompliance Adjustment related to the O&M Noncompliance Event x which occurs during Quarter q in Fiscal Year y as determined by reference to Table 4.2 in Section 4 of Division II

n = the total number of O&M Noncompliance Events in Quarter q of Fiscal Year y

CPI_y = CPI as at July 1 of Fiscal Year y ,

CPI_{Base} = CPI as at July 1, 2010

- (b) The assignment of O&M Noncompliance Points with respect of each O&M Noncompliance Event shall be undertaken in accordance with Article 6 of this Agreement.

3.5 Milestone Payment Adjustment Excess

The Milestone Payment Adjustment Excess as determined according to Appendix 4, if any, shall be applied to the MAP for the first year following Substantial Completion.

The Quarterly Milestone Payment Adjustment Excess with respect to any Quarter q for the year, y after the Substantial Completion Date shall be calculated using the following formula:

$$QMPAE_{q,y} = \left(\frac{d_{q,y}}{365} \right) \times MPAE$$

Where:

$QMPAE_{q,y}$ = the Quarterly Milestone Payment Adjustment Excess for Quarter q in Fiscal Year y

$MPAE$ = the Milestone Payment Adjustment Excess, if any, calculated in accordance with Appendix 4

$d_{q,y}$ = the number of days in Quarter q in Fiscal Year y :

- from the later of the start of the Quarter q and the Substantial Completion Date; and
- to the earlier of the end of Quarter q and the date 365 days after the Substantial Completion Date.

APPENDIX 8

LIST OF INITIAL FUNDING AGREEMENTS AND INITIAL SECURITY DOCUMENTS

[PLACEHOLDER]

APPENDIX 9

INSURANCE COVERAGE REQUIREMENTS AND INSURANCE BENCHMARKING

Section 1. Insurance Coverage Requirements

COVERAGE	BUILDERS RISK Required when performing Construction Work. Upon Substantial Completion, coverage may shift to property insurance
Form:	Builders All Risk (BAR) Completed Value Form. With the Department's approval, Builder's Risk and property insurance coverage may be provided in a combined Construction / All Risk program
Named Insured:	<ul style="list-style-type: none"> ▪ Developer and/or its Contractors of every tier as their interest may appear ▪ Department as its interest may appear
Policy Term:	60 months, subject to renewal as necessary until Final Acceptance (or earlier shift to property insurance coverage at Substantial Completion)
Policy Limit:	Full replacement cost of the covered property, plus an allowance for expediting expenses/extra expense, professional fees, demolition and debris removal, without risk of co-insurance. Sublimits should be as few as possible. If sublimits are required by the insurer, minimum sublimits shall be as shown under Coverage Extensions/Conditions (below) unless otherwise agreed to by the Department. In lieu of full replacement cost, Developer may provide a limit not less than probable maximum loss, plus an allowance for expediting expense/extra expense, professional fees, demolition and debris removal, without risk of co-insurance penalty; provided the probable maximum loss amount is derived from and supported by an engineering risk assessment by a qualified, experienced firm approved by the Department.
Coverage Extensions / Conditions:	<ul style="list-style-type: none"> ▪ 72-hour occurrence period ▪ Civil authority or ingress/egress clauses ▪ Design error/faulty workmanship exclusion, except ensuing loss not otherwise excluded is covered (LEG 2/96)

	<ul style="list-style-type: none"> ▪ Collapse is covered ▪ Testing included ▪ Others as specified in <u>Section 16.1.2</u> of Agreement ▪ Inland transit/ocean cargo \$25 million (separate policy acceptable) ▪ Offsite storage \$25 million ▪ Expediting expenses/extra expense \$25 million ▪ Demolition, increased cost of construction including undamaged property \$25 million ▪ Debris Removal \$25 million ▪ Professional fees \$5 million
Insured Perils:	All risk of direct physical loss or damage to covered property, provided that perils of Seismic Event and Terrorism need not be insured
Insured Property:	All property including footings, foundations, and excavations costs, installation, testing and/or commissioning related to the Project and including materials, supplies, equipment, machinery and other property of a similar nature that will become a permanent part of the insured project and also including all scaffolding, formwork, falsework, shoring, fences and temporary buildings or structures incidental to the Project.
Deductibles:	Not more than \$250,000 per occurrence
Coinsurance:	There shall be no coinsurance penalties or provisions.
Valuation:	Actual cost to repair or replace lost or damaged property including contractor's profit and overhead.
Insurer:	Per <u>Section 16.1.2.1</u> of the Agreement. Surplus lines insurers are acceptable, provided that they meet the requirements of <u>Section 16.1.2.1</u> .

COVERAGE	PROPERTY INSURANCE FOR O&M Required from NTP2 until end of Term, for all property, except real and personal property in the course of construction
Form:	All Risk. With the Department's approval, Builder's Risk and property insurance coverage may be provided in a combined Construction / All Risk program
Named Insured:	Developer

Additional Named Insureds:	Department and Lead Operations and Maintenance Contractor as their interests may appear
Policy Term:	Annual/Renewable
Policy Limit:	Not less than the probable maximum loss for all insured property, plus an allowance for expediting expense/extra expense, professional fees, demolition and debris removal, without risk of co-insurance penalty; provided the probable maximum loss amount is derived from and supported by an engineering risk assessment by a qualified, experienced firm approved by the Department
Sub Limits:	<ul style="list-style-type: none"> ▪ Offsite storage \$10 million ▪ Expediting expenses/extra expense \$25 million ▪ Demolition, increased cost of construction including undamaged property \$25 million ▪ Debris removal \$25 million ▪ Professional fees \$5 million
Coverage Extensions / Conditions:	<ul style="list-style-type: none"> ▪ 72-hour occurrence period ▪ Civil authority or ingress/egress clauses ▪ Design error/faulty workmanship exclusion, except ensuing loss not otherwise excluded is covered (LEG 2/96) ▪ Others as specified in <u>Section 16.1.2</u> of Agreement
Insured Perils:	All risk of direct physical loss or damage, provided that perils of Seismic Event and Terrorism need not be insured.
Insured Property:	All real and personal property other than Roadbed not located on or in Bridges, Tunnels or similar supporting structures
Deductibles:	Physical damage: Not more than \$250,000 per occurrence
Coinsurance:	Waived
Valuation:	Replacement cost for property damage
Insurer:	Per <u>Section 16.1.2.1</u> of the Agreement. Surplus lines insurers are acceptable, provided that they meet the requirements of <u>Section 16.1.2.1</u> .

COVERAGE	WORKERS' COMPENSATION / EMPLOYERS' LIABILITY COMPLIANT WITH CALIFORNIA STATUTE
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	Required during the Term of the Agreement
Named Insured:	Policies required of Developer and Contractors of every tier wherever and whenever OCIP policy does not apply
Limits:	Workers' Compensation: Statutory Employers' Liability: \$1 million per occurrence \$1 million disease per employee \$1 million disease policy limit EL to be scheduled under any excess or umbrella liability policy.
Policy Deductible:	Developer/Lead Contractor/Lead Operations and Maintenance Firm: Not to exceed \$250,000 per occurrence Other Contractors: Not to exceed \$250,000 per occurrence
Additional Terms:	Voluntary compensation endorsement Where applicable, endorsed to cover US Longshore and Harbor Workers Act, and Jones Act Others as specified in <u>Section 16.1.2</u> of Agreement
Insurer:	Per <u>Section 16.1.2.1</u> of the Agreement

COVERAGE	COMMERCIAL GENERAL LIABILITY, ISO FORM CG 00 01 OR EQUIVALENT Required during the Term of the Agreement
Named Insured:	Until Final Acceptance or any earlier termination of OCIP coverage: <ul style="list-style-type: none"> • Developer and OCIP-enrolled Contractors for Work performed that is not covered by OCIP (including O&M Work) • OCIP-excluded Contractors After Final Acceptance or any earlier termination of OCIP coverage: <ul style="list-style-type: none"> • Developer • Lead Operations and Maintenance Firm • Other Contractors
Additional Named Insured:	Department, but only with respect to liability arising out of the Project

Additional Insured	Other Indemnified Parties
Policy Limits:	<p>Until Final Acceptance or any earlier termination of OCIP coverage:</p> <p>\$1 million per occurrence \$5 million general aggregate per policy period \$5 million completed operations aggregate</p> <p>After Final Acceptance or any earlier termination of OCIP coverage:</p> <p>\$50 million per occurrence \$50 million in the aggregate per policy period</p> <p>Policy limits shall be shared by all insured and additional insured parties and shall reinstate annually. Policy limits may be met through a combination of primary and excess liability coverage, provided that no gap in coverage exists.</p>
Policy Deductible	Not to exceed \$250,000 per occurrence
Additional Terms:	<ul style="list-style-type: none"> • All limits dedicated to the Project • No exclusions for explosion, collapse, or underground (XCU) • If applicable, removal of exclusion for work within 50 feet of a railroad • Additional insureds covered for completed operations • Liability covers acts or omissions of named insured's employees engaged in the work • Developer's policy to include non-owned automobile liability, unless covered by Developer's automobile liability policy • No other restrictive exclusions without prior Department approval • Others as specified in <u>Section 16.1.2</u> of Agreement
Insurer:	Per <u>Section 16.1.2.1</u> of the Agreement.

COVERAGE	MARINE LIABILITY INSURANCE
	Required if any activity creates exposure under USL&H or Jones Act or creates other maritime exposure, such as when vessels are used in connection with the Work
Named Insured:	Operators of barges and other vessels

Policy Limits:	Limits as reasonably approved by the Department, to include (as appropriate): Broad form protection & indemnity Marine Bumbershoot Jones Act coverage USL&H Policy limits may be met through a combination of primary and excess liability coverage, provided that no gap in coverage exists and Excess Liability coverage applies to non-owned watercraft so that no operated vessel has less than the approved limits for P&I and Jones Act coverage.
Policy Deductible:	Not to exceed \$250,000 per occurrence
Additional Insured	Department and other Indemnified Parties
Additional Terms	As specified in <u>Section 16.1.2</u> of Agreement
Insurer:	Per <u>Section 16.1.2.1</u> of the Agreement.

COVERAGE	AIRCRAFT LIABILITY Required when aircraft are used in connection with the Work
Named Insured:	Operators of aircraft
Policy Limits:	Limits as reasonably approved by the Department
Policy Deductible:	Not to exceed \$250,000 per occurrence
Additional Insured	Department and other Indemnified Parties
Additional Terms:	<ul style="list-style-type: none"> • Applies to owned, non-owned, and hired aircraft • Others as specified in <u>Section 16.1.2</u> of Agreement
Insurer:	Per <u>Section 16.1.2.1</u> of the Agreement.

COVERAGE	COMMERCIAL AUTOMOBILE LIABILITY Required during the Term of the Agreement
Form:	ISO Business Automobile Policy or equivalent
Named Insured:	Individual policies provided by Developer and/or

	Contractors of every tier
Additional Insureds	Department and other Indemnified Parties
Policy Limits:	Developer/Lead Contractor/Lead Operations and Maintenance Contractor: \$50 million combined single limit Other Prime Contractors: Not less than \$5,000,000 combined single limit Policy limits may be met through a combination of primary and excess liability coverage, provided that no gap in coverage exists and excess liability coverage applies to owned, non-owned, and hired auto so that no operated auto (other than that of other Prime Contractors) has less than \$50 million
Policy Deductible:	Developer/Lead Contractor/Lead Operations and Maintenance Firm: Not to exceed \$250,000 per occurrence Other Contractors: Not to exceed \$250,000 per occurrence
Additional Terms:	<ul style="list-style-type: none"> • Developer's, Lead Contractor's or Lead Operations and Maintenance Firm's policy to provide "any auto" coverage or coverage for owned, non-owned and hired vehicles • Endorsement – Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90) for any Contractor who will at any time transport Contaminated Materials • Others as specified in <u>Section 16.1.2</u> of Agreement
Insurer:	Per <u>Section 16.1.2.1</u> of the Agreement

COVERAGE	PROFESSIONAL LIABILITY COVERAGE Required when performing professional services
Named Insured:	The Lead Engineering Firm, the geotechnical consultant and any Contractor performing Design Work
Retroactive Date:	Date of the first Contract for Design Work
Policy Term:	Construction Period For Design Work in connection with Renewal Work or Upgrades, policy shall reinstate annually
Policy Limits:	\$10 million each claim/policy aggregate for the Lead Engineering Firm and any Contractor performing Design

	<p>Work that is not a subcontractor to the Lead Engineering Firm</p> <p>\$3 million each claim/policy aggregate for other Contractors performing Design Work</p>
Key Coverages:	No exclusions or limitations for consequential or delay damages or exceeded cost estimate
Policy Deductible:	Not to exceed \$250,000 per occurrence
Additional Terms:	<ul style="list-style-type: none"> • Policy need not be Project-specific • Policy may provide coverage on a “claims made” basis • Others as specified in <u>Section 16.1.2</u> of Agreement
Insurer:	Per <u>Section 16.1.2.1</u> of the Agreement

COVERAGE	CONTRACTORS POLLUTION LIABILITY
	Required from and after Final Acceptance
Form:	Occurrence form
Named Insured:	Developer and Contractors of every tier
Policy Term:	Annually renewable policy with separate annual limits
Project Policy Limits:	\$25,000,000 minimum specific to this Agreement only
Policy Deductible:	Not to exceed \$250,000 per occurrence
Specific Terms and Conditions:	<ul style="list-style-type: none"> ▪ Coverage must be primary ▪ Natural resource damages must be covered ▪ Covered Operations – all those performed by or on behalf of the Named Insured ▪ Bodily Injury definition – deemed to include mental anguish, shock, mental injury or illness whether or not accompanied by physical injury or illness by any person or persons ▪ Property Damage definition – deemed to include diminution in value of third party property when accompanied by physical damage ▪ Blanket Contractual – for all written contracts (including third party action over claims) ▪ Coverage for transportation (in transit, loading and unloading exposure) to or from a jobsite

	<ul style="list-style-type: none"> ▪ Blanket non-owned disposal site coverage – for treatment, storage or disposal facilities which receive hazardous materials from the insured project ▪ No exclusions for radioactive matter/naturally occurring radioactive materials ▪ No exclusions for asbestos and lead/lead paint ▪ Coverage for punitive/exemplary damages, civil fines and penalties, where insurable by law ▪ Others as specified in <u>Section 16.1.2</u> of Agreement
Insurer:	Per <u>Section 16.1.2.1</u> of the Agreement

Section 2. Insurance Premium Benchmarking

Subject to Section 16.1.2.13 of the Agreement, this Section allocates the risk between the Department and Developer of significant increases in insurance premiums for Insurance Policies required during the period after Final Acceptance through an insurance benchmarking process. The benchmarking process will occur at each annual insurance renewal period according to the following provisions.

- 2.1 Increases in insurance premiums attributable to any of the following factors (“**Excluded Premium Increases**”) shall not be considered in determining and comparing insurance premiums under the benchmarking process described in this Section 2.1:
- (a) Additional or extended coverages beyond those required under this Appendix 9;
 - (b) Deductibles less than the maximum deductibles set forth in this Appendix 9; or
 - (c) Other variations from the requirements for Insurance Policies under Section 16.1 of the Agreement and this Appendix 9.
- 2.2 Not later than 60 days after the end of each the first three full annual insurance periods after Final Acceptance, Developer shall submit a report (“**Insurance Review Report**”) to the Department that includes the following elements:
- (a) The written binders of insurance in the form and content required under clause 1 of Section 16.1.2.4.1 of the Agreement for the actual Insurance Policies required under Section 16.1 of the Agreement and this Appendix 9 for the subject annual insurance period (“**Actual Benchmark Insurance Policies**”);
 - (b) The premium invoices for the Actual Benchmark Insurance Policies;
 - (c) If any of the Actual Benchmark Insurance Policies varies from the requirements under Section 16.1 of the Agreement and this Appendix 9, a comprehensive written analysis and explanation by Developer’s independent insurance broker setting forth (i) the effect (if any) that factors described in Sections 2.1(a) through (c) above have had on the premiums, (ii) the Excluded Premium Increases, if any, and (iii) the increase, if any, in the insurance premiums that would have occurred absent the factors described in Sections 2.1(a) through (c); and

- (c) Detailed calculations of the final amount of the insurance premiums for the Actual Benchmark Insurance Policies, adjusted for surcharges, refunds, Excluded Premium Increases, and increases due to the factors described in Sections 2.1(a) through (c).
- 2.3 At 60 days prior to each annual insurance period thereafter, Developer shall submit an Insurance Review Report to the Department that includes the following elements:
 - (a) Firm quotes from three established and recognized insurance providers for the Insurance Policies required under Section 16.1 of the Agreement and this Appendix 9 for the upcoming annual insurance period, without any variation from such requirements (“**Required Minimum Insurance Policies**”). The quotes shall represent the current and fair market cost of providing the Required Minimum Insurance Policies; and
 - (b) A comprehensive written analysis and explanation by Developer’s independent insurance broker setting forth (i) industry trends in premiums for the Required Minimum Insurance Policies, (ii) any claims (paid or reserved) since the last review period, with claim date(s), description of incident(s), claims amount(s), and the level of deductibles provided, (iii) the effect (if any) that factors described in Sections 2.1(a) through (c) above have had on the premiums for the Required Minimum Insurance Policies, and (iv) the Excluded Premium Increases (if any).
- 2.4 Thereafter, Developer shall place actual Insurance Policies required under Section 16.1 of the Agreement and this Appendix 9 for the subject annual insurance period (the “**Actual Insurance Policies**”). Not later than 60 days after the end of such annual insurance period, Developer shall provide an updated Insurance Review Report for the period just ended, with the information specified in Section 2.2 above with respect to the Actual Insurance Policies.
- 2.5 The Department, at its sole discretion, may independently assess the accuracy of the information in any Insurance Review Report or update and retains the right to perform its own independent insurance review, which may include retaining advisors, obtaining independent quotes for the Required Minimum Insurance Policies or performing its own assessment as to the impact of factors described in Sections 2.1(a) through (c) above, the amount of Excluded Premium Increases, and the amount of increases in the insurance premiums for the Actual Benchmark Insurance Policies that would have occurred absent the factors described in Sections 2.1(a) through (c). If the Department elects to independently assess, then Developer shall cooperate in good faith with any reasonable requests for additional information from the Department or its insurance advisor.
- 2.6 The initial benchmark amount of insurance premiums for the Actual Benchmark Insurance Policies shall be calculated and established promptly after receipt of the Insurance Review Reports for the first three full annual insurance periods following the Final Acceptance Date. The initial benchmark amount of insurance premiums shall equal one-third of the total premiums for the Actual Benchmark Insurance Policies as adjusted pursuant to Section 2.2(c) above or, if the Department deems appropriate in its reasonable discretion, as adjusted based on information obtained pursuant to Section 2.5 above (“the **Starting Insurance Benchmarking Premiums**”).
- 2.7 The Starting Insurance Benchmarking Premiums shall be escalated for the first annual insurance period occurring after the end of the first three full annual insurance periods to

an amount equal to 105% of the Starting Insurance Benchmarking Premiums. For each annual insurance period thereafter, the benchmark premiums shall equal 105% of the benchmark premiums for the immediately preceding annual insurance period. The benchmark premium amount as so determined for each annual insurance period is referred to as the “**Escalated Benchmark Insurance Premiums**”. Broker’s fees and agent’s commissions will not be considered as part of the benchmarking exercise described in this Section 2, and are the exclusive responsibility of Developer.

- 2.8 The Escalated Benchmark Insurance Premiums for each annual insurance period shall be compared to the total amount of annual insurance premiums for Insurance Policies shown in the Original Financial Model and related Financial Modeling Data for the same annual insurance period, as such modelled premiums may have been adjusted due to Relief Events. The higher of the two figures shall be the “**Insurance Premium Benchmark Amount**” for such annual insurance period.
- 2.9 The Insurance Premium Benchmark Amount shall be used in the benchmarking process for each annual insurance period during the remainder of the Term in accordance with the following procedures:
- (a) The Department will use the applicable Insurance Premium Benchmark Amount to measure the difference in premium costs for the applicable annual insurance period.
 - (b) Developer may voluntarily choose to procure an insurance package which exceeds the Required Minimum Insurance Policies in scope of coverage or limits, has more additional insureds, or has lower deductibles. In such case, both Parties recognize that: the actual insurance premiums are to be reduced by the Excluded Insurance Premiums for the purpose of the insurance benchmarking process and the Maximum Availability Payment adjustment described in Section 2.10 below.
 - (c) No later than 30 days after Developer’s submission of each updated Insurance Review Report pursuant to Section 2.4 above, the Department shall make its determination of the eligible premium increases subject to the Maximum Availability Payment adjustment described in Section 2.8 below. In the event of a dispute, the Department’s determination shall be subject to the Dispute Resolution Procedures.
- 2.10 If the annual insurance premiums for the Actual Insurance Policies, as such premiums may be adjusted for Excluded Insurance Premiums as set forth in Section 2.9(b) above, are in excess of 130% of the applicable Insurance Premium Benchmark Amount, the Department shall increase the Maximum Availability Payment in an amount equal to 85% of such premiums that are in excess of 130% of the applicable Insurance Premium Benchmark Amount until the next benchmarking period. If the annual insurance premiums for the Actual Insurance Policies, as such premiums may be adjusted for Excluded Insurance Premiums as set forth in Section 2.9(b) above, are less than 70% of the applicable Insurance Premium Benchmark Amount, the Department shall reduce the Maximum Availability Payment in an amount equal to 85% of the difference between such premiums and 70% of the applicable Insurance Premium Benchmark Amount until the next benchmarking period.

APPENDIX 10

[RESERVED]

APPENDIX 11

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

[PLACEHOLDER]

APPENDIX 12

CALCULATION AND PAYMENT OF REFINANCING GAIN

Section 1. Data and Projections Required for the Calculation of the Refinancing Gain

Developer must notify the Department as soon as practicable of its interest in proceeding with a Refinancing and the proposed schedule for documenting and closing the proposed Refinancing other than an Exempt Refinancing.

Developer shall provide the following information at least 35 days in advance of the scheduled Refinancing date:

- (a) The Financial Model with the original projections duly adjusted for any changes in the project structure (e.g. the Department Changes);
- (b) Details of the actual timing and amounts of Committed Investment from the Effective Date to the scheduled Refinancing date;
- (c) Details of the actual timing and amounts of Distributions to Equity Members or any of their Affiliates from the Effective Date to the scheduled Refinancing date ;
- (d) Information on the actual cash flow of Developer from the Effective Date to the scheduled Refinancing date, set out under the same headings as the Financial Model;
- (e) Term sheet and other relevant information on the terms of the Refinancing;
- (f) A pre-Refinancing Financial Model, which does not take into account the effects of the Refinancing, as updated by Developer (i) for any changes in the Project and based on the actual performance of the Project to the date of calculation and other macroeconomic assumptions and (ii) with projections for the cash flow of Developer from the estimated Refinancing date to the end of the Term, including projected Distributions (“**Pre-Refinancing Financial Model**”);
- (g) A post-Refinancing Financial Model which fully takes into account the effects of the Refinancing as projected on the basis of the term sheet and new Funding Agreements, as updated by Developer (i) for any changes in the Project and based on the actual performance of the Project to the date of calculation and other macroeconomic assumptions and (ii) with projections for the cash flow of Developer from the scheduled Refinancing date to the end of the Term, including projected Distributions and all costs incurred in connection with the Refinancing (“**Post-Refinancing Financial Model**”);
- (h) A calculation of the Refinancing Gain based on the above and the provisions described below; and
- (i) Information on the assumptions for the projections in the Pre-Refinancing Model and Post-Refinancing Financial Model.

For the purposes of this Appendix, “Pre-Refinancing Equity IRR” means the Equity IRR calculated in the Pre-Refinancing Financial Model and “Post-Refinancing Equity IRR” means the Equity IRR calculated in the Post-Refinancing Financial Model.

The Pre-Refinancing Equity IRR and Post-Refinancing Equity IRR shall be calculated for the entire Term taking into account:

- (a) Timing and amounts of the investment by Equity Members;
- (b) Distributions received by Equity Members up to the estimated Refinancing date; and
- (c) Projected Distributions as shown in the Financial Model immediately prior to the Refinancing or immediately after the Refinancing, as applicable.

Section 2 Calculation of the Refinancing Gain

The Refinancing Gain for any Refinancing other than an Exempt Refinancing will be equal to the greater of zero and [(A-B)-C] where:

A = the Net Present Value of the Distributions to be made from the estimated Refinancing date to the end of the Term as projected in the Post-Refinancing Financial Model, discounted using the Pre-Refinancing Equity IRR ;

B = the Net Present Value of the Distributions to be made from the estimated Refinancing date to the end of the Term as projected in the Pre-Refinancing Financial Model, discounted using the Pre-Refinancing Equity IRR; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Original Equity IRR as described in Section 3 below.

For the avoidance of doubt, “Refinancing Gain” excludes the portion of gain, if any, (calculated as provided above) from the first Refinancing that is less than or equal to that shown in the Financial Model and incorporated into the Financial Model. Any gain from the first Refinancing (calculated as provided above) in excess of the gain therefrom as shown in the Financial Model shall constitute Refinancing Gain.

Section 3 Adjustment to Raise the Pre-Financing Equity IRR to the Equity IRR

If the Pre-Refinancing Equity IRR is lower than the Original Equity IRR, a calculation will be done to determine the amount of Distributions which, if received by Equity Members at the estimated Refinancing date, would increase the Pre-Refinancing Equity IRR to the Original Equity IRR (while the MAP is maintained and the minimum prevailing debt covenants established in the Funding Agreements are not violated). **[To be used only if preferred proposer is selected on the basis of a Primary Financial Proposal - The determination of this amount of Distributions needed to achieve the Original Equity IRR shall treat as Project Debt, rather than Committed Investment, any initial Committed Investment in excess of the maximum permitted initial Committed Investment under Section 15.2.9 of the Agreement.]** This amount of Distributions will be deducted as factor C in Section 2 above and the Department will only be entitled to receive 60% of the remaining balance as the Refinancing Gain.

Section 4 Payment of Department's Portion of Refinancing Gain

The Department will receive payment of its portion of the Refinancing Gain as a reduction in the Availability Payments over all or a portion of the Term, subject to the following provisions:

- (a) The Department will not receive its portion of the Refinancing Gain faster than the Equity Members of Developer; and
- (b) If the Refinancing involves raising new debt or otherwise increasing the amount of outstanding Project Debt anticipated in any Fiscal Year of the Financial Model, the Department may elect to receive its portion as a lump sum payment concurrently with the close of the Refinancing.

Section 5 Final Calculation and Payment

Developer shall perform a final calculation of the Refinancing Gain and deliver the results to the Department within 15 days after the close of the Refinancing.

APPENDIX 13

INITIAL PROJECT DEBT COMPETITION (“IPDC”) PROTOCOL

[NOTE: This Appendix will be used only if preferred proposer is selected on the basis of a Primary Financial Proposal]

Overview

The Department seeks to ensure that the Project achieves best value financing at Financial Close and that Developer remains responsible for delivering finance.

Set out below is the structure, process, and protocol (“**IPDC Protocol**”) for a competition for Developer to place the Initial Project Debt other than any TIFIA financing included in Developer’s financial plan set forth in Appendix 2-B to the Agreement. Developer shall undertake this competition prior to Financial Close. The IPDC shall be under the purview and control of Developer, subject only to the opportunity for the Department to provide comments, to observe, monitor and audit, and to require certain approvals of the process, as set forth in this IPDC Protocol.

Key Objectives of the IPDC

The purpose of this IPDC Protocol is to accomplish the key objectives set forth below (“**Key Objectives**”) through Developer’s conduct of a robust, comprehensive, and fair competition for financing proposals from a broad array of providers/underwriters of capital (“Lenders”) indicating potential interest in providing Developer initial debt financing for the Project. All actions and decisions under or relating to this IPDC Protocol shall be directed toward fulfilling this purpose.

The IPDC Protocol incorporates the following Key Objectives of the Department, the Authority and Developer:

- Delivering best value financing available at the time of Financial Close;
- Keeping the Maximum Availability Payments as low as possible and in any case below the Affordability Limit; and
- Ensuring that the Initial Project Debt is placed and Financial Close occurs with no changes to this Agreement and other Contract Documents, including no changes in the risk allocation between public and private sectors, unless the Department in its sole discretion allows otherwise.

Phases of the IPDC

The IPDC incorporates 5 phases:

1. Core Lender Phase: from issuance of the Request for Proposals through to selection of Developer and execution and delivery of this Agreement. (This phase has been completed and therefore is not set forth in this Appendix.)
2. IPDC Preparatory Phase: including identification of potential long-list of Lenders

3. IPDC Initial Submission Phase: from solicitation of responses from potential long-list Lenders to short-listing Lenders
4. IPDC Final Submission: from short-listing Lenders to final credit confirmation
5. Final credit confirmation to Financial Close.

The described approach and procedures for conducting the IPDC set forth in this IPDC Protocol are a plan only, both in general and in the specific, which will remain flexible and able to respond to issues and circumstances as they develop. In practice, therefore, it is possible that the actual approach and procedures adopted in the process of conducting the IPDC and reaching Financial Close will differ from those set out below, subject to the approval of such changes by the Department.

TIFIA

If Developer's financial plan in its Proposal includes TIFIA financing, then Developer will pursue all necessary steps to obtain and close the TIFIA financing in coordination with the IPDC schedule and concurrently with close of the balance of the Initial Project Debt. Developer will need to progress the TIFIA credit approval process in sufficient time to develop the final transaction structure that will be presented to short-listed Lenders.

Principles of the IPDC

- The IPDC shall be transparent and open to observation by the Department, its advisors and other public sector stakeholders;
- Developer will propose additional IPDC structure and schedule milestones for approval by the Department in advance of commencing the IPDC. The schedule milestones shall be consistent with all Completion Deadlines;
- Developer will manage and control all operational aspects of the IPDC and maintain a robust audit trail of all correspondence with potential Lenders;
- Developer will keep the Department informed of the IPDC progress at all times, including consultation with the Department on a timely basis on matters that may affect the Key Objectives;
- The Department shall have the right to disapprove any aspect of the IPDC if the Department is of the view, acting reasonably, that such aspect may materially and adversely affect the Department or the Key Objectives; and
- The Department shall have the right to review and audit all correspondence, documentation and other books and records relating to the IPDC. The Department shall have the right to attend meetings as it deems necessary.

Roles and Responsibilities of the Key Parties

Joint Finance Working Group ("JFWG")

The IPDC will be managed and conducted by Developer's designated finance team ("**Developer's Finance Team**"), working in cooperation with the Department's designated finance team ("**Department's Finance Team**"). As of the Effective Date, each Party delivered

to the other written notice identifying the members of its Finance Team. Each Party will keep the other currently informed of subsequent changes to the members of its Finance Team.

The Department's Finance Team will be the first line of reporting for Developer's Finance Team. Working jointly, the Department's Finance Team and Developer's Finance Team will be known as the Joint Finance Working Group ("**JFWG**"). Participation of the Department's Finance Team in the JFWG shall be for the purposes of providing input and comments on matters and issues affecting attainment of the Key Objectives, protecting the Department's interest in attaining the Key Objectives, and observing and monitoring the IPDC process. The Department's participation is not intended and shall not be used to direct or control the conduct of the IPDC.

Principals Finance Group ("PFG")

In addition, the IPDC process will be supervised by a Principals Finance Group ("PFG"), to ensure the achievement of the Key Objectives. The PFG will be selected from Developer's Finance Team, provided that the Department may select one to two non-voting member(s) from the Department's Finance Team. The PFG is expected to number approximately four to five individuals.

The PFG may receive support from advisors and members of the JFWG, as requested.

IPDC Phases

Each phase of the IPDC is set out below together with the anticipated actions and review points.

1. Core Lender Phase : From issuance of the RFP through selection of Developer and Commercial Close

Completed.

2. IPDC Preparatory Phase – including identification of potential long-list of Lenders

Scope

The formal IPDC process has commenced, or will commence after delivery of the IPDC Commencement Notice, with a preparatory phase in which Developer identifies and engages likely participants including banks and capital market underwriters.

Developer shall conduct an initial wide approach to the market (perhaps up to 20 potential Lenders (including PABs underwriters and banks) and produce a long list of financiers of Initial Project Debt to take part in the next phase (perhaps up to 15 Lenders). A wide approach is critical to carrying out the purpose of this IPDC Protocol as set forth above. The output of this phase will be an understanding of the universe of interested Lenders and their likely appetite for the financing transaction.

Identifying Potential Lender Long-list

Developer shall submit a proposed list of potential Lenders to the JFWG for review and comment. None of the potential Lenders may be Affiliates. The list shall identify any Lenders on the list that are also participants with Core Lenders. Developer then shall submit the proposed list, as modified based on such review and comment, to the Department, and the proposed list shall be subject to the Department's written approval for consistency with the foregoing purpose. The Department shall have the right to widen the pool of proposed Lenders.

Developer may include in the proposed list Lenders who acted exclusively as Core Lenders or participating lenders for losing proposers.

Core Lender Right to Match

It is anticipated that given the close involvement of the Core Lenders in the development of the Proposal, the Core Lenders will not submit responses to the IPDC, but instead have the opportunity to match the terms offered and generated by the process up to a predetermined portion of the Initial Project Debt anticipated to be up to 50% of the total Initial Project Debt other than TIFIA.

Bank vs. Bond Competition

Developer's Finance Team will have to demonstrate that it has given due consideration to both bank and bond financing solutions (including PABs). The evaluation process should give due consideration to running bank and bond alternatives on a comparable basis through to Phase 4: IPDC Final Submission. Developer's Finance Team shall provide the Department with evidence of its consideration of a bond alternative and its plan for implementation of a bond alternative, including its basis for selection of the conduit issuer, underwriters, and credit enhancement providers, as applicable.

3. Initial Submission Phase – From solicitation of responses from potential Lenders to selection of short-listed Lenders

Scope

The formal IPDC process has continued, or will continue, after the preparatory phase, with an Initial Submission Phase. Initial feedback on financing capacity, tenor and price will be received at this point. Although this IPDC Protocol assumes an Initial and Final Submission process, depending on the outcome and responses at the Initial Submission Phase it may be possible to combine Initial and Final Submission phases and move straight to full credit committee approval and Financial Close.

The Final Submission Phase provides flexibility in the process to get best and final offers, introduce new relevant information and make any necessary adjustments to the financing transaction structure to finalize financing proposals.

Initial Project Documents

The initial approach to the market will be based on the work established through the Core Lender phase. This will include provision of a Preliminary Information Memorandum ("**PIM**") with attached documents:

The PIM is expected to include:

- Project description and Developer's proposed solution
- Key parties, corporate structure and contractual structure
- Proposed financing plan including anticipated TIFIA and PABs allocations
- Summary of due diligence carried out to date

- Summary risk matrix setting out risk allocations between the Department, Developer and Contractors
- Summary of credit information respecting the State and sources for the Milestone Payment and Availability Payments
- Timetable and process
- Requirements for submission

The following documents are likely to be issued as attachments to the PIM:

- Contract Documents and all amendments thereto (if any)
- Legal due diligence report of Core Lenders' legal advisor
- Insurance due diligence report of Core Lenders' insurance advisor
- Technical due diligence report of Core Lenders' technical advisor
- Term sheet template (i.e. with blanks to complete) setting forth proposed terms and conditions for the financing transaction structure
- Financial Model output sheets along with results of sensitivities
- Draft or executed contracts (and amendments thereto, if any) with the Lead Contractor and Lead Operations and Maintenance Contractor
- Annual reports of Developer's equity members
- Credit information respecting the State and respecting the sources for Milestone Payment and Availability Payments

The term sheet for the proposed financing transaction structure will be submitted to the Department's Finance Team for review, consultation and approval. Approval shall be for the purpose of determining that the proposed terms and conditions for the financing transaction structure set forth in the term sheet are the best available under the prevailing market conditions for optimizing the Key Objectives.

Responses from Potential Lenders

The full set of submission requirements will be set out within the PIM. These will likely include:

- Comments on proposed security package and proposed terms and conditions of financing transaction structure
- Underwriting capacity and hold capacity
- Preliminary pricing with associated terms and conditions based on either underwriting or club basis or both
- Confirmation that the Lender can meet the project schedule and accepts the appointed Core Lender due diligence advisors

- A description of the credit process and timing required for full credit approval, including rating agency review and rating (if required by Lender)
- Comprehensive commentary on any issues raised by the review of the PIM and attachments (and any other project documents and due diligence reports received)
- Experience in and willingness to undertake hedging – interest rate and CPI
- Experience and willingness to work with TIFIA JPO
- Experience with similar transactions
- Comments on the Original Financial Model and sensitivities

Evaluation by Developer's Finance Team

The evaluation will take place after responses, if any, are issued and the deadline to submit requested clarifications occurs. The evaluation will objectively assess the robustness and deliverability of proposals from potential Lenders against clearly-defined criteria. Among the key areas of evaluation at Initial Submission Phase will be:

- Commercial acceptance of the proposed financing transaction and transaction structure
- Ability to meet the Project Schedule and length of committed finance
- Price and capacity tendered
- Commitment to use one of the approved base interest rates for setting market reference interest rates at Financial Close as listed in Appendix 2-C to this Agreement

Developer will issue a detailed Initial Evaluation Report to the JFWG for discussion, clarification and comment. Thereafter, it will be revised as necessary and submitted to the PFG for approval.

The Initial Evaluation Report will provide qualitative and quantitative analyses with a recommendation of short-listed Lenders to be taken forward to the Final Submission Phase.

The Initial Evaluation Report also will discuss the structuring and pricing implications raised by the information and responses received through the Initial Submission Phase. There should be flexibility regarding the number of short-listed Lenders, depending on the source of financing and nature of initial submissions. It may well be the case that all potential Lenders submitting offers are short-listed and taken forward to the Final Submission Phase.

The Initial Evaluation Report shall also be subject to the Department's review and approval. Approval shall be for the limited purpose of confirming that Developer, the JFWG and PFG made the recommendations in a reasonable, good faith effort to optimize the Key Objectives.

Upon approval by the PFG and the Department, the process will if necessary proceed to the Final Submission Phase.

Selection of Short-listed Lenders

Developer will inform all potential Lenders whether they have been short-listed.

Given the anticipated right-to-match arrangements offered to the Core Lenders, these institutions will be automatically short-listed.

4. Final Submission Phase from short-listing Lenders to final credit confirmation

Scope

Developer will develop the transaction structure against updated project information to a level which is “ready for credit”, against a target price. The transaction structure shall be that which is the best available under the prevailing market conditions for optimizing the Key Objectives. In assessing prevailing market conditions, Developer shall give particular weight to the structuring concepts, terms and conditions in the proposals from the short-listed Lenders at the initial submission phase, and may confer with each short-listed Lender in preparing the transaction structure. Developer shall submit the proposed transaction structure to the JFWG for review and comment. Developer then shall submit the proposed transaction structure, as modified based on such review and comment, to the Department, and the proposed transaction structure shall be subject to the Department’s written approval for consistency with the foregoing standard.

The output of this phase will be “ready for credit” offers for the transaction as structured, allowing the process to move forward to Financial Close. It would be the intention for there to be very few remaining conditions at the completion of this Phase.

Final Submission Phase Documentation

Presentations to short-listed Lenders and rating agencies may be offered with Developer, the Department and due diligence advisors. They will address any outstanding issues regarding the transaction structure, due diligence information and project documentation.

At the appropriate time and where relevant, updated and final project documentation will be provided to the short-listed Lenders. This will include:

- Updated PIM
- Contract Documents and amendments thereto (if any)
- Final legal due diligence report from Core Lenders’ legal advisor
- Final insurance due diligence report from Core Lenders’ insurance advisor
- Final technical due diligence report from Core Lenders’ technical advisor
- Draft Initial Financing Documents
- Final Contracts (and amendments thereto, if any) with the Lead Contractor and Lead Operations and Maintenance Contractor
- Updated credit information respecting the State and respecting the sources for Milestone Payment and Availability Payments
- Updated Financial Model and sensitivities (using financing terms agreed at Initial Submission Phase)

- Model auditor report (including tax and accounting sign off)

Evaluation Criteria

Developer will submit to the JFWG and the Department for their approval the evaluation criteria, including scoring system, for final submission. The evaluation criteria may consist of a pass-fail component and a quantitative assessment component. The Department's approval is for the purpose of determining that the evaluation criteria, including scoring system, are consistent with the Key Objectives and the provisions set forth below.

The pass-fail component will be to:

- Confirm no further comments on project documentation
- Agreement with final due diligence reports
- Confirm full credit approval with a binding commitment valid for at least 90 days
- Confirm that the final submission uses one of the approved base interest rates for setting market reference interest rates at Financial Close as listed in Appendix 2-C to this Agreement or as otherwise approved by the Department in writing in its good faith discretion

The quantitative assessment component will determine the Maximum Availability Payments that would be required under the terms and conditions of the final submission assuming application of the Department-approved transaction structure and assuming no change in the Original Equity IRR. The quantitative assessment component also may include scoring of other specific financing terms. Predominant weight will be given to the Maximum Availability Payment score. The quantitative assessment will be conducted through updates to the Original Financial Model that change the inputs of financing terms to reflect the terms in the final submission.

Evaluation of Final Submissions

The content of final submissions at this phase in the process will be a consolidated list of required "bid items", e.g., margins, ratios etc., as well as information to determine whether the submission meets the pass-fail analysis. There may be some need for final harmonization of financing terms or other clarifications and therefore it may be necessary to have final confirmation of or revised final submissions.

Each final submission that meets the pass-fail criteria will be evaluated under the adopted evaluation criteria and the results summarized and ranked in a final evaluation report. The final evaluation report will include the quantitative analysis and scoring results. The Lenders who meet the pass-fail criteria will be ranked based on their quantitative assessment scores.

The final evaluation report also will include the basis of the offer to be issued to the Core Lenders to enable their right to match to be exercised.

Developer will issue a detailed final evaluation report to the JFWG for discussion, clarification and comment. Thereafter, it will be revised as necessary and submitted to the PFG for approval. The final evaluation report shall also be subject to the Department's review and approval. Approval shall be for the limited purpose of confirming proper application of pass-fail criteria and the quantitative scoring system, and proper ranking.

Core Lenders Right to Match

As part of this final process, the Core Lenders may exercise their right to match up to a combined total principal amount of the required financing equal to the predetermined portion of the Project Debt. Promptly after selection, Developer shall deliver to the Core Lenders written notice setting forth all the material financing terms to be matched and informing the Core Lenders that they have ten days from delivery of the notice to exercise their right to match.

The right to match shall be capable of exercise only by the Core Lenders delivering to Developer within such ten-day period written notice setting forth (a) an unconditional election to match, (b) the total amount of the financing they elect to match, (c) confirmation that all the financing terms have received credit committee approval, and (d) confirmation that the notice constitutes a binding commitment valid at least for 90 days from the deadline for offer submission subject only to the commitment conditions allowed under the terms established for the final submissions.

Such deadline may not be extended for any reason without the approval of Developer. If the Core Lenders for any reason fail to deliver notice of exercise as required above by such deadline, the right to match shall automatically terminate. Time is of the essence to the Department and Developer in exercising the right to match.

5. Final Credit Confirmation to Financial Close

At the conclusion of the Final Submission Phase there will be a set of selected Lenders (which may include matching Core Lenders) which will have credit approval to proceed to Financial Close. The selected Lenders will be required to submit or update their credit approval based on the harmonized terms as provided at the conclusion of the 4th Phase (“final credit confirmation”).

No new information will be presented, except for:

- Updated Financial Model and sensitivities (using funding terms agreed at Final Submission Phase), in accordance with Section 14.2.1 of the Agreement;
- Updated financial model audit report – any errors or omissions identified which increase the Maximum Availability Payments will be borne by Developer; and
- Final Initial Financing Documents.

Other Matters

Conflicts of Interest

No individual serving as a financial advisor to Developer on the JFWG or PFG may participate with, or receive special economic benefit from placing financing with, any potential Lender, whether as advisor, underwriter or otherwise, in any manner in connection with the IPDC or the Initial Project Debt. Prior to commencing any activity under this IPDC Protocol, Developer shall deliver to the Department (a) a written agreement from each such financial advisor agreeing to the foregoing and (b) a written agreement from each financial advisor and his/her firm to Developer confirming that (i) such advisor will not receive any such special economic benefit and (ii) the firm has established, and will maintain through Financial Close, strict ethical walls that will prevent any information or knowledge gained by the financial advisor from being used by such firm or any potential Lender, except that which is distributed by Developer to all potential Lenders.

Contact with Potential Lender Long-list

Developer's Finance Team will contact the Lenders on the final list by emailing invitations in the agreed-upon form to establish their willingness to participate in the IPDC. Any who wish to do so will be required to sign a non-disclosure agreement in an agreed form.

The Department will be provided with an original version of each executed non-disclosure agreement.

Each potential Lender will be required to nominate a single contact name for ease of administration.

Data Room

Developer's Finance Team will set up a collaborative software tool to manage provision and storage of all information and communications to and from potential Lenders. This includes the exchange of any clarification questions and responses. Unless deemed commercially sensitive, the responses will be made available to all participants. Responses will not be provided to commercially sensitive questions unless (a) the question is resubmitted (or can be rephrased by Developer) so that it does not contain content claimed to be commercially sensitive, (b) the relevant potential Lender agrees to dissemination of the question and response to all potential Lenders, or (c) Developer and the Department agree that responding to the question on a confidential basis will not give the potential Lender an unfair competitive advantage.

The data room will enable communication with participants to be controlled and monitored. This will show the robustness and transparency of the process to all stakeholders and provide an audit trail of the IPDC process.

Communications Protocol

Developer shall document meetings and conference calls (with three or more parties) with potential Lenders and shall promptly provide the Department (and its advisors) with minutes of any meeting. The Department shall have the right to attend, but will not be in charge of, meetings and conference calls.

Any material information and clarifications about the IPDC process that are communicated to one potential Lender shall be promptly shared with all other identified potential Lenders.

Responses to potential Lender questions, comments and requests for clarifications, and any clarifications to be requested from potential Lenders, will be prepared by Developer's Finance Team and subject to review and comment by the Department's Finance Team. Developer will issue responses and requests for clarifications after carefully considering such comments.

APPENDIX 14

FORM OF DIRECT AGREEMENT

THIS DIRECT AGREEMENT dated as of _____, 20__ (this “**Direct Agreement**”), among: the California Department of Transportation, a public agency of the State of California (the “**Department**”); [name of Developer] a [corporate form] incorporated in [state of incorporation] (“**Developer**”); and [Lenders’ Collateral Agent or Indenture Trustee], as Trustee or Collateral Agent (in such capacity, together with its successors in such capacity, the “**Collateral Agent**”) for the Lenders (as defined in the Agreement).

RECITALS

A. The Department has determined that the Presidio Parkway Project located in the City and County of San Francisco, California (the “**Project**”). be designed, constructed, financed, operated and maintained by a private sector party. In connection with the Project, the Department and Developer have entered into a Public-Private Partnership Agreement dated as of _____, 201_ (the “**Agreement**”).

B. In order to enable Developer to finance certain activities and certain obligations in respect of the Project, the Lenders have agreed to make available debt facilities, on the terms set out in the Financing Documents, for the purpose of financing the Project.

C. The execution of this Direct Agreement by the Department in favor of the Collateral Agent is a condition precedent to the debt facilities being made available to Developer by the Lenders.

NOW, THEREFORE, in consideration of the foregoing and the mutual terms and covenants contained herein, the parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. Capitalized terms used and not otherwise defined and references used but not construed in this Direct Agreement have the respective meanings and constructions assigned to such terms in the Agreement. In addition, the following terms have the meanings specified below:

Agreement has the meaning given to it in the Recitals.

Cure Period means:

- (a) With respect to a Developer Default set forth in a Department Notice that is curable by the payment of money to the Department, a period starting on the date of the receipt of the Department Notice and ending 30 days after the later of (i) receipt of such Department Notice or (ii) expiration of Developer’s cure period (if any) under the Agreement;
- (b) With respect to a Developer Default set forth in a Department Notice other than Incurable Developer Defaults and those under clauses (a) above and (c) below, a period starting on the date of the receipt of the Department Notice and ending 60 days after the later of (i) receipt of such Department Notice or (ii) expiration of Developer’s cure period (if any) under the Agreement.

- (c) With respect to a Developer Default set forth in a Department Notice, other than Incurable Developer Defaults, that by its nature is not capable of cure unless and until the Step-in Party or a court receiver has possession and control of the Project, a period starting on the date of the receipt of the Department Notice and ending 180 days after the later of (i) receipt of such Department Notice or (ii) expiration of Developer's cure period (if any) under the Agreement provided, however, that (i) during such cure period the Step-in Party cures all Developer Defaults which may be cured by the payment of money within the Cure Period under clause (a) above, (ii) during such cure period the Step-in Party cures all Developer Defaults governed by clause (b) above within the Cure Period available under clause (b) above, and (iii) within the later of (A) five days after expiration of Developer's cure period, if any, and (B) 30 days after the Collateral Agent receives the Department Notice, the Step-in Party initiates and thereafter pursues with good faith, diligence and continuity lawful processes and steps to obtain the appointment of a court receiver for the Project and possession, custody and control of the Project. This Cure Period is subject to extension in accordance with Section 6.4 below.

In no case, however, shall a Cure Period extend beyond the expiration of the Term.

Default means an Event of Default as defined in the Funding Agreement for the senior Initial Project Debt or any event or circumstance specified in such Funding Agreement would (with the expiration of a grace period, the giving of notice, the lapse of time, the making of any determination under the Financing Documents or any combination of any of the foregoing) be an Event of Default.

Department Notice has the meaning given to it in Section 4 below.

Discharge Date means the date on which all of the obligations of Developer under the Financing Documents have been irrevocably discharged in full to the satisfaction of the Collateral Agent.

Event of Default means an Event of Default as defined in the Funding Agreement.

Incurable Developer Default means:

- (a) A Developer Default under Section 18.1.1.9 of the Agreement (wrongful transfer by Equity Member or wrongful Change of Control);
- (b) A Developer Default under Section 18.1.1.15(b) or (c) of the Agreement (missed Long Stop Date or missed Final Acceptance Deadline);
- (c) A Developer Default under Section 18.1.1.12 or 18.1.1.13 of the Agreement (bankruptcy-type events), unless it concerns an Equity Member or Guarantor;

Lender Notice has the meaning given to it in Section 5.1 below.

Revival Date has the meaning given to it in Section 12.1 below.

Step-in Date has the meaning given to it in Section 8 below.

Step-in Notice has the meaning given to it in Section 7.1 below.

Step-in Party has the meaning given to it in Section 7.2 below.

Step-in Period means the period from and including the Step-in Date until the earliest of:

- (a) The Substitution Effective Date;
- (b) The Step-out Date;
- (c) The date of termination of the Agreement by the Department in accordance with the Agreement (and, in the case of termination under Section 19.4 of the Agreement, in accordance with this Direct Agreement);
- (d) The date of the expiration or early termination of the Term under the Agreement;
- (e) Expiration of the applicable Cure Period, and
- (f) The date an Incurable Developer Default occurs;

provided, however, that if there occurs a preceding Incurable Developer Default, there shall be no Step-in Period.

Step-out Date means the effective date a Step-in Party designates for ceasing its step-in as set forth in any Step-out Notice served by the Step-in Party pursuant to Section 9 below.

Step-out Notice has the meaning given to it in Section 9 below.

Substituted Entity has the meaning given to it in the Agreement.

Substitute Accession Agreement means the agreement to be entered into by a Substituted Entity pursuant to Section 11.1 below.

Substitution Effective Date has the meaning given to it in Section 11.1 below.

Substitution Notice has the meaning given to it in Section 10.1 below.

1.2 Interpretation

Unless the context otherwise clearly requires:

- (a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;
- (b) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;
- (c) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";
- (d) The word "will" shall be construed to have the same meaning and effect as the word "shall";
- (e) Any reference herein to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be;
- (f) The words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Direct Agreement in its entirety and not to any particular provision hereof;

- (g) All references herein to Sections and Schedules shall be construed to refer to Sections of and Schedules to this Direct Agreement. Any Schedules to this Direct Agreement are an integral part hereof. The provisions of this Direct Agreement shall prevail over the provisions of any Schedules to the extent of any inconsistency;
- (h) The headings used in this Direct Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Direct Agreement;
- (i) References herein to this Direct Agreement or to any other agreement or document relating to the Project includes a reference to this Direct Agreement, or, as the case may be, such other agreement or document as amended from time to time; and
- (j) "Winding-up", "liquidation", "dissolution", "insolvency", "adjustment" or "reorganization" of a Person and references to the "liquidator", "assignee", "administrator", "receiver", "custodian", "conservator" "sequestrator" or "trustee" of a Person shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, insolvency representatives or officers under the law of the jurisdiction in which such Person is incorporated, organized or constituted or any jurisdiction in which such Person or, as the case may be, insolvency representative or officer carries on business including the seeking of winding up, liquidation, dissolution, reorganization, administration, arrangement, adjustment or relief of debtors.

2. REPRESENTATIONS AND WARRANTIES

2.1 The Department represents and warrants to the Collateral Agent that:

- (a) **Organization; Power and Authority.** The Department is a public agency, duly formed and validly existing under the laws of the State of California and has the power and authority to transact the business it transacts and proposes to transact, to execute this Direct Agreement and the Agreement and to perform the provisions hereof and thereof.
- (b) **Authorizations, Enforceability.** This Direct Agreement and the Agreement have been duly authorized by the Department, and this Direct Agreement constitutes a legal, valid and binding obligation of the Department enforceable against the Department in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- (c) **No Default.** There is no Department Default; the Department is not aware of any Developer Default, and there exists no event or condition of which the Department is aware that would, with the giving of notice or passage of time or both, constitute such a Developer Default or Department Default.
- (d) **Initial Financing Documents.** The Department acknowledges and agrees that the documents referred to in Schedule B attached hereto are deemed to constitute Initial Financing Documents for purposes of the Agreement.

- (e) **Letter of Credit Beneficiary.** The Department acknowledges and agrees that any letter of credit issued for purposes of the requirements set forth in clause (b) of the definition of Committed Investment under the Agreement shall be deemed to satisfy such requirements even though the Collateral Agent, and not Developer, is named as beneficiary thereunder.

2.2 The Collateral Agent represents and warrants to the Department that:

- (a) **Purpose of Loan.** The purposes of the Project Debt evidenced and secured by the Financing Documents are solely to (a) fund Developer's costs of acquiring, designing, permitting, building, constructing, improving, equipping, modifying, operating, maintaining, reconstructing, restoring, rehabilitating, renewing and replacing the Project, (b) fund reserves relating to the Project, and (c) pay closing costs with respect to the Initial Project Debt, financing costs and fees, and interest costs.
- (b) **Initial Financing Documents.** Schedule B lists all the Initial Financing Documents.
- (c) **Compliance with Mandatory Requirements.** The Financing Documents comply with the provisions of Section 15.4 of the Agreement.

3. AGREEMENTS AND CONSENT TO SECURITY; NOTICES TO DEPARTMENT

3.1 The Department acknowledges notice and receipt of the Financing Documents, and, notwithstanding anything in the Agreement to the contrary but in reliance on the Collateral Agent's representations and warranties, consents to the assignment by Developer to the Collateral Agent of all of Developer's Interests pursuant to the terms and provisions of, the Security Documents.

3.2 If the Security Documents listed in Schedule B include a pledge of equity interests in Developer held by initial Equity Members, the Department acknowledges notice and receipt of such Security Documents, and, notwithstanding anything in the Agreement to the contrary but in reliance on the Collateral Agent's representations and warranties, consents to the granting by each of the initial Equity Members to the Collateral Agent of a security interest in such equity interests in Developer pursuant to the terms and provisions of such Security Documents.

3.3 Notwithstanding anything in the Agreement to the contrary but in reliance on the Collateral Agent's representations and warranties, the Department agrees that the assignment of, and the grant of the security interest in and first lien over, all of Developer's right, title and interest in, to and under the Agreement and the other Contract Documents to which Developer is a party pursuant to the Security Documents, the grant of the security interest by each initial Equity Member in its equity interests in Developer pursuant to the Security Documents and the execution by Developer and the Department of this Direct Agreement and the performance of their respective obligations hereunder, in each case, shall neither constitute a Developer Default, Default Termination Event or any other breach by Developer of the Agreement nor would, with the giving of notice or lapse of time or both, constitute a Developer Default, Default Termination Event or any other breach by Developer of the Agreement, nor require the consent of the Department, other than as provided herein.

3.4 Collateral Agent shall deliver to the Department together with delivery to Developer or any other Person, every notice of election to sell, notice of sale or other notice under any requirement of law or of any Financing Document in connection with the exercise of remedies

under the Direct Agreement or any other Financing Document. The Collateral Agent agrees to be bound by the provisions of Section 15.4.9 of the Agreement.

4. DEPARTMENT NOTICE OF TERMINATION AND EXERCISE OF REMEDIES

4.1 Except as provided otherwise in Section 12.2 below, the Department shall give the Collateral Agent written notice (a "Department Notice") promptly upon giving written notice to Developer of:

- (a) A Developer Default other than an Incurable Developer Default;
- (b) The Department's right to terminate, or the Department's election to terminate, the Agreement under Section 19.4 of the Agreement;
- (c) The Department's exercise of any rights under Sections 18.2.3 (except under 18.2.3.4), 18.2.4 or 18.2.7.1 of the Agreement; or
- (d) The Department's right to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Developer) under the Agreement.

4.2 A Department Notice shall specify:

- (a) The unperformed obligations of Developer under the Agreement that are the grounds for termination of the Agreement, or for suspension of performance or for exercise of the other rights all as referred to in Sections 18.2.7.1, 18.2.3 (except 18.2.3.4), 18.2.4 and 19.4 of the Agreement in detail sufficient to enable the Collateral Agent to assess the scope and amount of any liability of Developer resulting therefrom;
- (b) To the extent known to the Department, all amounts due and payable by Developer to the Department under the Agreement on or before the date of such Department Notice and which remain unpaid at such date and the nature of Developer's obligation to pay such amounts; and
- (c) The estimated amount of Developer's payment obligation to the Department that the Department reasonably foresees will arise during the applicable Cure Period.

4.3 Upon the Collateral Agent's request made not more frequently than monthly, the Department shall update the statements and information in its Department Notice.

4.4 Following receipt of a Department Notice, the Collateral Agent shall have the right to deliver to the Department a Step-in Notice as provided in Section 7 below.

5. LENDER NOTICE; PAYMENTS TO COLLATERAL AGENT

5.1 The Collateral Agent shall give the Department and the Department's Comptroller written notice (a "Lender Notice"), with a copy to Developer, promptly upon the occurrence of any Default or Event of Default (whether or not a Department Notice has been served relating to the same event). The Lender Notice shall be sent to the Department and the Department's Comptroller via certified or registered mail, return receipt requested.

5.2 The Collateral Agent shall specify in any Lender Notice the circumstances and nature of the Default or Event of Default to which the Lender Notice relates.

5.3 The Department shall, following receipt of a Lender Notice and until further notice from the Collateral Agent, pay to an account designated by the Collateral Agent in the Lender Notice any payments required to be made by the Department to Developer under the Agreement including any termination compensation required to be paid to Developer under Article 19 of the Agreement calculated in accordance with Article 19 of the Agreement, but subject to all rights, defenses, adjustments, deductions and offsets respecting payment available to the Department under the Agreement. The Collateral Agent shall provide to the Department the following information: (a) the individual responsible for administering the account, including his or her position; (b) the mailing address of such individual; and (c) the telephone, fax and e-mail address of such individual.

5.4 All sums paid as provided in Sections 5.3 above shall be deemed paid to Developer under the Agreement. The Department shall have no liability, whatsoever, for any delay in processing any payment request pursuant to Sections 5.3 above, provided that such delay does not extend 14 Business Days beyond the date of the Department's certified, return-receipt or registered mail receipt of the Lender Notice. In no event shall any payment be due to the Collateral Agent earlier than it is due under the Agreement.

5.5 Developer and the Collateral Agent agree that any payment made in accordance with Section 5.3 above shall constitute a complete discharge of the Department's relevant payment obligations to Developer. The Department shall have the unconditional right to rely upon any Lender Notice purported to be signed and delivered by or for the Collateral Agent, without Department obligation or liability to ascertain or investigate its authenticity, truth or accuracy.

5.6 The Collateral Agent shall promptly notify the Department of any decision to accelerate amounts outstanding under the Financing Documents or to exercise any enforcement remedies under the Financing Documents.

5.7 Neither the Collateral Agent nor the Lender shall exercise any right it may have pursuant to the Security Documents to assign, transfer or otherwise dispose of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents to the extent the exercise of such rights would constitute a Refinancing and Developer has failed to comply with the requirements of Section 15.5 of the Agreement.

6. LIMITATIONS ON DEPARTMENT REMEDIES DURING CURE PERIOD; CURE PERIOD EXTENSION

6.1 The Department agrees not to take any of the following actions prior to the expiration of any applicable Cure Period except if there exists an Incurable Developer Default:

- (a) Terminate the Agreement under Section 19.4 of the Agreement;
- (b) Suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Developer) under the Agreement, provided the Agreement has not been rejected; or
- (c) Take or support any legal action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of Developer or for the composition or readjustment of Developer's debts, or any similar insolvency procedure in relation to Developer, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Developer or for any part of Developer's Interest;

provided that such agreement of the Department shall not prevent the Department from (i) taking any such actions on a Revival Date in respect of any other prior Developer Default or (ii) exercising any other rights and remedies available to the Department under the Contract Documents with respect to the subject Developer Default or any other breach by Developer of the Contract Documents.

6.2 In the event:

- (a) The Department exercises any step-in rights under Section 18.2.4 or suspension rights under Section 18.2.7.1 of the Agreement,
- (b) The Collateral Agent delivers a Step-in Notice; and
- (c) There does not exist and does not occur any Incurable Developer Default;

Then, the Department shall cease exercising its step-in and suspension rights at such time as:

- (i) The Step-in Party obtains possession or control of the Project from Developer;
- (ii) The Collateral Agent notifies the Department that the Step-in Party stands ready to immediately commence good faith, diligent curative action; and
- (iii) The Department is fully reimbursed for the Department's Recoverable Costs in connection with the Department's performance of any act or Work authorized by Section 18.2.4 of the Agreement.

6.3 Except if there exists an Incurable Developer Default, during any Cure Period, without giving a Step-in Notice, the Collateral Agent shall have the right (but shall have no obligation), at its sole option and discretion, to perform or arrange for the performance of any act, duty, or obligation required of Developer under the Agreement, or to cure any default of Developer thereunder at any time (whether or not a Default Termination Event has occurred or been declared), which performance by the Collateral Agent shall be accepted by the Department in lieu of performance by Developer and in satisfaction of Developer's obligations under the Agreement. To the extent that any default of Developer under the Agreement is cured and/or any payment liabilities or performance obligations of Developer are performed by the Collateral Agent during the Cure Period, such action shall discharge the relevant liabilities or obligations of Developer to the Department.

6.4 If the Collateral Agent or another Step-in Party shall have succeeded to the Developer's Interest and obtained possession diligently and with continuity, and in any event within the 180-day Cure Period under clause (c) of the definition of Cure Period, where applicable, shall have delivered to the Department within 15 days after obtaining possession and control a Substitute Accession Agreement in accordance with Section 11 below, and shall have thereafter diligently and with continuity cured all Developer Defaults which are capable of being cured through possession, then the Collateral Agent or other Step-in Party shall have a time after it obtains possession as may be necessary with exercise of good faith, diligence and continuity to cure such Developer Default or perform such condition, in any event not to exceed 90 days after the date it obtains possession, and the Cure Period under clause (c) above shall be extended accordingly; provided that in no event shall the Term be extended.

7. STEP-IN NOTICE

7.1 Upon the issuance of a Lender Notice or a Department Notice, except for an Incurable

Developer Default, the Collateral Agent may give a written notice (a "Step-in Notice") under this Section 7 to the Department at any time during the Cure Period in the case of the issuance of a Department Notice or at any time following the receipt by the Department of a Lender Notice.

7.2 The Collateral Agent shall nominate, in the Step-in Notice, (a) the Collateral Agent, a Lender or any entity that is wholly owned by a Lender or group of Lenders; or (b) any Person approved by the Department as a Substituted Entity in accordance with Section 12.5 of the Agreement and Section 10 below, and the person so nominated being referred to as the "Step-in Party".

7.3 The Department shall have the unconditional right to rely upon any Step-in Notice purported to be signed and delivered by or for the Collateral Agent, without Department obligation or liability to ascertain or investigate its authenticity, truth or accuracy.

8. RIGHTS AND OBLIGATIONS ON STEP-IN

8.1 Commencing on the date the Department receives the Step-in Notice and approves the appointment of the Step-in Party if required by Section 7.2 above ("Step-in Date") and thereafter during the Step-in Period, the Step-in Party shall be entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Party under this Direct Agreement.

8.2 Without prejudice to Section 12 below (Revival of Remedies), and provided there does not exist or occur any Incurable Developer Default, from and after commencement of any applicable Cure Period and during the applicable Step-in Period, the Department shall:

- (a) Not terminate or give notice terminating the Agreement under Section 19.4.1 (Termination for Developer Default) of the Agreement unless the grounds for termination or giving notice of termination or otherwise exercising its rights under Sections 19.4 of the Agreement are failure by the Step-in Party to perform Developer's obligations under the Agreement or unless there exists an Incurable Developer Default;
- (b) Not suspend the Department's performance (including in connection with any insolvency or bankruptcy proceeding in relation to Developer) under the Agreement, unless the grounds for suspension of performance are failure by the Step-in Party to perform Developer's obligations under the Agreement or unless the Agreement has been rejected;
- (c) Not take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of Developer or for the composition or readjustment of Developer's debts, or any similar insolvency procedure in relation to Developer, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Developer or for any part of Developer's Interest;
- (d) Continue to make payments pursuant to Section 5.3 above; and
- (e) Endorse over as directed by the Collateral Agent any checks received by the Department with respect to the Performance Security if, in each case, such security is in the form of a surety bond; provided that the Collateral Agent reimburses the Department for any Losses, including the Department's Recoverable Costs, that the Department incurs in attempting to cure the Developer Default as and to the extent:
 - (i) the Department is entitled to such reimbursement pursuant to the Agreement and
 - (ii) the Department has promptly notified the Collateral Agent of such Losses at or

prior to the time of endorsement.

8.3 The Department, Collateral Agent and Developer agree that:

- (a) The performance by the Department in favor of either the Step-in Party or Developer shall be a good and effective discharge of the Department's obligations under this Direct Agreement and the Agreement;
- (b) The Department's receipt of performance from either the Step-in Party or Developer shall be a good and effective discharge of Developer's corresponding obligations under the Agreement;
- (c) The Collateral Agent shall be entitled at any time by notice in writing to the Department to direct (such direction being binding on the Collateral Agent, the Department and Developer) that, at all times during the Step-in Period, the Step-in Party shall be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with the Department under the Agreement. The Department shall be entitled to conclusively rely on any such decisions, directions, approvals or consents, without any duty whatsoever to ascertain or investigate the validity thereof, and any such decisions, directions, approvals or consents shall be as binding on Developer as if made or given by Developer itself;
- (d) Developer and the Collateral Agent agree that any payment Department makes during the Step-in Period pursuant to Section 5.3 above shall constitute a complete discharge of the Department's relevant payment obligations to Developer;
- (e) Any amount due from Developer to the Department under the Agreement or this Direct Agreement as of the Step-in Date and notified to such Step-in Party prior to the Step-in Date shall be paid to the Department on the Step-in Date, failing which the Department shall be entitled to exercise its rights under the Agreement in respect of the amount so due and unpaid; and
- (f) Developer shall not be relieved from any of its obligations under the Agreement, whether arising before or after the Step-in Date, by reason of the Step-in Party exercising the rights provided herein, except to the extent provided in Section 6.2 above and Section 9 below.

9. STEP-OUT

A Step-in Party may, at any time, by giving not less than 30 days' prior written notice ("Step-out Notice") to the Department, terminate its obligations to the Department under this Direct Agreement respecting the event giving rise to the Step-in Notice, in which event such Step-in Party shall be released from all obligations under this Direct Agreement respecting the event giving rise to the Step-in Notice, except for any obligation or liability of the Step-in Party arising on or before the effective date set forth in the Step-out Notice. The obligations of the Department to the Step-in Party under this Direct Agreement respecting the event giving rise to the Step-in Notice shall also terminate upon the effective date set forth in the Step-out Notice. If the Step-in Party giving the Step-out Notice is a Substituted Entity that is not a Lender, then such Step-in Party shall be released from all obligations under this Direct Agreement arising from and after the effective date contained in the Step-out Notice and its relinquishment of possession and control of the Project.

10. SUBSTITUTION PROPOSAL BY THE LENDERS

10.1 The Collateral Agent may give a notice ("Substitution Notice") under this Section 10 in writing to the Department at any time:

- (a) During any Cure Period;
- (b) During any Step-in Period; or
- (c) After delivery of a Lender Notice.

10.2 In any Substitution Notice, the Collateral Agent shall notify the Department that it intends to designate a Substituted Entity.

10.3 The Collateral Agent shall, as soon as practicable, provide to the Department the information, evidence and supporting documentation regarding the proposed Substituted Entity and any third party entering into a material subcontract with such Substituted Entity as required by Section 12.5 of the Agreement, including:

- (a) The name and address of the proposed Substituted Entity and its proposed Key Contractors;
- (b) The names of the proposed Substituted Entity's shareholders or members and the share capital or partnership or membership interests, as the case may be, held by each of them;
- (c) The manner in which it is proposed to finance the proposed Substituted Entity and the extent to which such financing is committed;
- (d) Copies of the proposed Substituted Entity's and its proposed Key Contractors' most recent financial statements (and if available such financial statements shall be for the last three financial years) or in the case of a newly-formed special purpose company its opening balance sheet;
- (e) A copy of the proposed Substituted Entity's and its proposed Key Contractors' formation documents, and other evidence of their organization and authority, including resolutions and incumbency certificates;

- (f) Details of the resources available to the proposed Substituted Entity and its proposed Key Contractors, and the appropriate qualifications, experience and technical competence available to the proposed Substituted Entity and its proposed Key Contractors to enable the proposed Substituted Entity to perform the obligations of Developer under the Agreement;
- (g) The names of the proposed Substituted Entity's and its proposed Key Contractors' directors and any key personnel who will have responsibility for the day-to-day management of its participation in the Project;
- (h) Disclosure of any actual or potential conflicts of interest of the proposed Substituted Entity and its proposed Key Contractors; and
- (i) All certificates, including certificates regarding debarment or suspension, forms, statements, representations and warranties that the Department may reasonably request, signed by the proposed Substituted Entity and, where applicable, proposed Key Contractors.

10.4 The Department shall not be required to give its approval to the proposed Substituted Entity if:

- (a) There are unremedied breaches under the Agreement and there is no rectification plan reasonably acceptable to the Department for curing the Developer Defaults within the applicable Cure Periods and for curing the other breaches which are capable of being rectified by the Substituted Entity; or
- (b) Any proposed security interests to be granted by the proposed Substituted Entity to the Collateral Agent and/or the Lender in addition to (or substantially different from) the security interests granted to the Collateral Agent and/or the Lender under the Initial Funding Agreements or Initial Security Documents materially and adversely affect the ability of the Substituted Entity to perform Developer's obligations under the Contract Documents or have the effect of increasing any liability of the Department, whether actual or potential (unless a Rescue Refinancing is concurrently proposed, in which case the Project Debt Termination Amount may increase by up to 10%).

10.5 If the Department fails to give its approval within 60 days of the date on which the Department has confirmed it has received the information specified in Section 10.3 above in respect of any proposed Substituted Entity, or any extension thereof by mutual agreement of the Department and the Collateral Agent, then the approval of the Department shall be deemed to have been given.

11. SUBSTITUTION

11.1 If the Department approves (or is deemed to have approved) a Substitution Notice pursuant to Section 10 above, the Substituted Entity named therein shall execute a duly completed Substitute Accession Agreement substantially in the form attached hereto as Schedule A and submit it to the Department (with a copy thereof to the other parties to this Direct Agreement). The assignment set forth in the Substitute Accession Agreement shall become effective on and from the date on which (a) the Collateral Agent or the Substituted Entity lawfully succeeds to all the Developer's Interest through exercise of foreclosure rights and actions on security interests or through transfer from Developer in lieu of foreclosure, (b) the Department receives all payments described in Section 11.4 below and (c) the Department countersigns the Substitute Accession Agreement (the "Substitution Effective Date"), or the date

that is ten days after the date the Department receives the completed Substitute Accession Agreement if the Department fails to sign the Substitute Accession Agreement.

11.2 As of the Substitution Effective Date:

- (a) Such Substituted Entity shall become a party to the Contract Documents and this Direct Agreement in place of Developer;
- (b) All of Developer's obligations and liabilities under the Contract Documents and under this Direct Agreement arising from and after the Substitution Effective Date shall be immediately and automatically transferred to the Substituted Entity, without release of Developer from any such obligations and liabilities to the Department. Notwithstanding the foreclosure or other enforcement of any security interest created or perfected by a Financing Document, and notwithstanding occurrence of the Substitution Date, Developer shall remain liable to the Department for the payment of all sums owing to the Department under the Agreement and for the performance and observance of all of Developer's covenants and obligations under the Agreement;
- (c) Such Substituted Entity shall exercise and enjoy the rights and perform the obligations of Developer under the Contract Documents and this Direct Agreement, and
- (d) The Department shall owe its obligations (including any undischarged liability with respect to any loss or damage suffered or incurred by Developer prior to the Substitution Effective Date) under the Contract Documents and this Direct Agreement to such Substituted Entity in place of Developer, subject to the Department's right to offset any losses or damages suffered or incurred by the Department as provided under the Agreement.

11.3 The Department shall use its reasonable efforts to facilitate the transfer to the Substituted Entity of Developer's obligations under the Agreement and this Direct Agreement.

11.4 The Substituted Entity shall pay to the Department on the Substitution Effective Date any amount due to the Department under the Agreement and this Direct Agreement, including the Department's reasonable costs and expenses incurred in connection with (a) Developer's default and termination, (b) the Department's activities with respect to the Project during any period the Department was in possession of the Project, and (c) the approval of the Substituted Entity, all as of the Substitution Effective Date and notified to such Substituted Entity prior to the Substitution Effective Date. The Department's receipt of the payment pursuant to this Section 11.4 shall be a condition precedent to the Substitution Effective Date.

11.5 The occurrence of the Substitution Effective Date shall not extinguish prior Developer Defaults that remain uncured, and the Department shall continue to have all rights and remedies available under the Agreement with respect to such Developer Defaults, including any applicable termination rights, subject to (a) the limitations on the Department's exercise of such rights and remedies set forth in this Direct Agreement during any applicable Cure Period that continues after the Substitution Effective Date, (b) the limitations on termination due to accumulation of Noncompliance Points prior to the Substitution Effective Date to the extent provided in Section 12.4.3 of the Agreement and (c) Section 13 below.

11.6 As of the Substitution Effective Date, the Department shall enter into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Developer shall be replaced as a party by the Substituted Entity.

12. REVIVAL OF REMEDIES; INCURABLE DEVELOPER DEFAULT

12.1 If:

- (a) A Department Notice has been given;
- (b) The grounds for that notice are continuing and have not been remedied or waived; and
- (c) The Step-in Period ends without cure of the Developer Defaults that were the subject of the Department Notice,

Then, from and after the date such Step-in Period expires (the “**Revival Date**”), the Department shall be entitled:

- (i) Except as provided otherwise in Section 6.4 above, to act upon any and all grounds for termination or suspension available to it in relation to the Agreement in respect of defaults under the Agreement not remedied or waived;
- (ii) To pursue any and all claims and exercise any and all remedies against Developer; and
- (iii) To take or support any action of the type referred to in Section 19.6 of the Agreement if and to the extent that it is then entitled to do so under the Agreement.

12.2 The Department may terminate the Agreement without providing a Department Notice and. Step-in Period or Cure Period to the Collateral Agent in the event of an Incurable Developer Default. Upon the occurrence of an Incurable Developer Default, the Department’s termination and suspension rights shall be effective without regard to any limitations set forth in this Direct Agreement, except to the extent provided otherwise in Section 13 below.

13. NEW AGREEMENTS

13.1 The provisions of this Section 13 shall apply only in the event:

- (a) There occurs an Incurable Developer Default under clause (a) or (c) of the definition of Incurable Developer Default; or
- (b) (i) there occurs a Developer Default governed by clause (c) of the definition of Cure Period, (ii) the Collateral Agent pursues with good faith, diligence and continuity lawful processes and steps to obtain the appointment of a court receiver for the Project and possession, custody and control of the Project, (iii) despite such efforts the Collateral Agent is unable to obtain such possession, custody and control of the Project within the 180-day Cure Period set forth in clause (c) of the definition of Cure Period and (iv) no Step-out Notice has been given.

13.2 If this Section 13 is applicable and the Department terminates the Agreement, then (a) the Department shall deliver to the Collateral Agent a written notice of such termination, and (b) the Collateral Agent or other Step-in Party, to the extent then permitted by Law, shall have the option to obtain from the Department agreements to replace the Contract Documents, and, to the extent necessary, new ancillary agreements (e.g. escrow agreements) (together the “New Agreements”) in accordance with and upon the terms and conditions of this Section 13.

13.3 In order to exercise such option, the Collateral Agent or other Step-in Party must deliver to the Department, within 60 days after the Department delivers its written notice of termination, (a) a request for New Agreements, (b) a written commitment that the Collateral Agent or other Step-in Party will enter into the New Agreements and pay all the amounts described in Section 13.5 below, and (c) originals of such New Agreements, duly executed and acknowledged by the Collateral Agent or other Step-in Party. If any of the foregoing is not delivered within such 60-day period, the option in favor of the Collateral Agent and all other Step-in Parties shall automatically expire.

13.4 Within 30 days after timely receipt of the written notice, written commitment and New Agreements duly executed, the Department shall enter into the New Agreements to which the Department is a party with the Collateral Agent or other Step-in Party, subject to any extension of such 30-day period as the Department deems necessary to clear any claims of Developer to continued rights and possession.

13.5 Upon the execution by all parties and as conditions to the effectiveness of the New Agreements, the Collateral Agent or other Step-in Party shall perform all of the following:

- (a) Pay to the Department:
 - (i) Any and all sums which would, at the time of the execution of the New Agreements, be due under the Agreement but for such termination; and
 - (ii) The amount of any termination compensation previously paid by the Department under the Agreement, with interest thereon at the Late Payment Rate from the date the termination compensation was paid until so reimbursed;
- (b) Otherwise fully remedy any existing Developer Defaults under the Agreement (provided, however, that with respect to any Developer Default which cannot be cured until the Collateral Agent or other Step-in Party obtains possession, it shall have such time, after it obtains possession, as is necessary with the exercise of good faith, diligence and continuity to cure such default, in any event not to exceed 90 days after the date it obtains possession);
- (c) Without duplication of amounts previously paid by Developer, pay to the Department all damages, including the Department's Recoverable Costs, incurred by the Department in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy proceeding, (iii) the recovery of possession of the Project, (iv) all the Department activities during its period of possession of, and respecting, the Project, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, and (v) the preparation, execution, and delivery of such New Agreements. Upon request of the Collateral Agent or other Step-in Party, the Department will provide a written, documented statement of such costs and expenses. The foregoing damages shall be reduced by the sum of the Availability Payments that would have accrued from and after termination until the effective date of the New Agreement assuming no termination had occurred and there had been no adjustments to such Availability Payments;
- (d) Deliver to the Department a new Payment Bond and Performance Security and new letters of credit and guarantees to the extent then required under the Agreement; and

- (e) If applicable, fund the Handback Requirements Reserve to the level then required under the New Agreement.

13.6 If the sum of the Availability Payments described in Section 13.5(c) above exceeds the sum of the damages described in Section 13.5(c) above, then the Department shall pay the excess to the Collateral Agent or other Step-in Party within 30 days after the effective date of the New Agreement.

13.7 Upon execution of the New Agreements and payment of all sums due the Department, the Department shall:

- (a) Assign and deliver to the Collateral Agent or other Step-in Party, without warranty or representation, all the property, contracts, documents and information that Developer may have assigned and delivered to the Department upon termination of this Agreement pursuant to Section 19.6 of the Agreement,
- (b) If applicable, transfer into a new Handback Requirements Reserve established by the Collateral Agent or other Step-in Party in accordance with the Agreement, all funds the Department received from the Handback Requirements Reserve pursuant to Section 5.10.3.3 of the Agreement (or from draw on a Handback Requirements Letter of Credit) less so much thereof that the Department spent or is entitled to as reimbursement for costs of Renewal Work the Department performed prior to the effectiveness of the New Agreements.

13.8 The New Agreements shall be effective as of the date of termination of the Agreement and shall run for the remainder of the Term. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as the Contract Documents and ancillary agreements and documents that were binding on the Department and Developer (except for any requirements which have been fulfilled by Developer prior to termination and except that Section 17.1 of the Agreement (and any equivalent provisions of the other Contract Documents) shall be revised to be particular to the Collateral Agent or other Step-in Party.

13.9 If the holders of more than one Security Document make written requests upon the Department for New Agreements in accordance with this Section 13, the Department shall grant the New Agreements to, as applicable, the holder whose Security Documents have the most senior priority of record. Priority shall be established as follows.

- (a) The Department shall submit a written request to the Collateral Agent to designate the Security Documents having the most senior priority of record. The Department shall have the right to conclusively rely on the Collateral Agent's written designation, without duty of further inquiry by the Department and without liability to any Lender; and thereupon the written requests of each holder of any other Security Document shall be deemed to be void.
- (b) If the Department does not receive the Collateral Agent's written designation within ten days after delivering written request, then the Department may conclusively rely, without further inquiry and without liability to any Lender, on the seniority indicated by a then-current title report that the Department obtains from one of the four largest title insurance companies doing business in California (unless otherwise agreed in writing by the most senior holder so indicated); and thereupon the written requests of each holder of any other Security Document shall be deemed to be void.
- (c) In the event the holders of more than one Security Document share *pari passu* senior lien priority as indicated pursuant to clause (a) or (b) above and make written

requests upon the Department for New Agreements in accordance with this Section 13, the Department shall grant the New Agreement to such holders jointly (unless otherwise agreed in writing by such holders); and thereupon the written requests of each holder of any other Security Documents shall be deemed to be void.

14 GENERAL

14.1 Neither the Lenders nor the Collateral Agent shall have any obligation hereunder to extend credit to the Department or any contractor to the Department at any time, for any purpose.

14.2 For so long as any amount under the Financing Documents is outstanding, the Department shall not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation of the Agreement or any interest therein by Developer, other than as specified in the Agreement or this Direct Agreement.

14.3 Notwithstanding anything to the contrary contained herein, the Collateral Agent is acting hereunder, not in its individual capacity but solely as collateral agent, on behalf of the secured parties identified in the Security Documents. The Collateral Agent shall not be required to take any action whatsoever hereunder unless and until it is specifically directed to do so in writing as specified in the Security Documents. The Collateral Agent shall not be liable for acting in accordance with such directions or for failing to act if it does receive any such written directions. Under no circumstances (other than in respect of gross negligence or willful misconduct of the Collateral Agent) shall the Collateral Agent be liable for any and all claims, liabilities, obligations, losses, damages, penalties, costs and expenses that may be imposed on, incurred by, or asserted against the Collateral Agent at any time or in any way relating to or arising out of the execution, delivery and performance of this Direct Agreement by the Collateral Agent. Under no circumstances shall the Collateral Agent be liable for any indirect, special, consequential or punitive damages for any action it takes pursuant to the authority or directions given under the Security Documents. For the avoidance of doubt, under no circumstances shall the Collateral Agent be required to perform any activity related to the construction of the Project including, without limitation, directing or supervising any portion of the construction of the Project. Nothing contained herein shall require the Collateral Agent to advance or risk its own funds.

15. TERMINATION

This Direct Agreement shall remain in effect until the earlier to occur of (a) the Discharge Date; (b) the time at which all of the Department's obligations and liabilities have expired or have been satisfied in accordance with the terms of the Agreement and this Direct Agreement; and (c) any assignment to a Substituted Entity has occurred under Section 11 above and the Department shall have entered into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Developer has been replaced as a party by the Substituted Entity.

16. EFFECT OF BREACH

Without prejudice to any rights a party may otherwise have, a breach of this Direct Agreement shall not of itself give rise to a right to terminate the Agreement.

17. NO PARTNERSHIP

Nothing contained in this Direct Agreement shall be deemed to constitute a partnership between the parties hereto. None of the parties shall hold itself out contrary to the terms of this Section 17.

18. REMEDIES CUMULATIVE

No failure or delay by the Department, the Lenders or the Collateral Agent (or their designee) in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The remedies provided herein are cumulative and not exclusive of any remedies provided by law and may be exercised by the Lenders, the Collateral Agent or any designee, transferee or assignee thereof from time to time.

19. AMENDMENT AND WAIVER

No amendment, modification or waiver of any provision of this Direct Agreement shall be effective against any party hereto unless the same shall be in writing and signed by the party against whom enforcement is sought, and then such amendment, modification or waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

20. SUCCESSORS AND ASSIGNS

20.1 No party to this Direct Agreement may assign or transfer any part of its rights or obligations hereunder without the consent of the other parties, save that (a) the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Financing Documents, and (b) the Department may assign or transfer its rights and obligations hereunder to any entity that succeeds to the governmental powers and authority of the Department.

20.2 This Direct Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

21. COUNTERPARTS

This Direct Agreement may be executed in any number of counterparts, each of which shall be identical and all of which, taken together, shall constitute one and the same instrument, and the parties may execute this Direct Agreement by signing any such counterpart. Transmission by facsimile of an executed counterpart of this Direct Agreement shall be deemed to constitute due and sufficient delivery of such counterpart, to be followed thereafter by an original of such counterpart.

22. SEVERABILITY

If, at any time, any provision of this Direct Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired. The illegal, invalid or unenforceable provision shall be deemed replaced by such provisions as shall be legal, valid and enforceable in

the relevant jurisdiction.

23. NOTICES

23.1 Any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Direct Agreement (each, a notice) to a party must be given in writing (including by fax or electronic mail). All notices will be validly given if on a Business Day to each party at the following address:

To the Department:

[Caltrans contact]
[Title (e.g., Manager of Finance)]
California Department of Transportation
[Street number]
[City, State, zip code]
Telephone. [_____]
Fax: [_____]
E-Mail:[_____]

With copy to:

[Caltrans attorney]
[Title (e.g., Special Counsel)]
[Office]
California Department of Transportation
[Street number]
[City, State, zip code]
Telephone. [_____]
Fax: [_____]
E-Mail:[_____]

To Developer:

[Developer's name]
[Street number]
[City, State, zip code]
Telephone: [_____]
Fax: [_____]
E-Mail:[_____]

To the Collateral Agent:

[Collateral Agent's name]
[Office or department (e.g., Corporate Trust Administration)]
[Street number]
[City, State, zip code]
Telephone. [_____]
Fax: [_____]
E-Mail:[_____]

23.2 A notice shall be deemed to have been given:

- (a) Upon receipt, if delivered in person;
- (b) Upon receipt (confirmed by automatic answer back or equivalent evidence of

receipt), if validly transmitted electronically before 3:00 p.m. (local time at the place of receipt) on a Business Day;

- (c) One Business Day after delivery to the courier properly addressed, if delivered by overnight courier; or
- (d) Four Business Days after deposit with postage prepaid and properly addressed, if delivered by United States certified or registered mail.

23.3 Each of the parties will notify each other in writing of any change of address, such notification to become effective 15 days after notification.

24. GOVERNING LAW AND JURISDICTION

24.1 This Direct Agreement shall be governed by, and construed in accordance with, the law of the State of California applicable to contracts to be performed within such State. The Parties consent to exclusive jurisdiction and venue in the State Superior Court for the City and County of San Francisco, California.

24.2 Each of Developer, the Department and the Collateral Agent irrevocably consents to service of process by personal delivery, certified mail, postage prepaid or overnight courier, and waives any different statutory requirements for service of process. Nothing in this Direct Agreement will affect the right of any party to serve process in any other manner permitted by law.

24.3 Each of the Department, Developer and the Collateral Agent hereby (a) certifies that no representative, agent or attorney of another party has represented, expressly or otherwise, that the other party would, in the event of a proceeding, seek to attack the enforceability of the foregoing waiver and (b) acknowledges that it has been induced to sign, and to change its position in reliance upon the benefits of, this Direct Agreement by, among other things, the mutual waivers in this Section 24.

25. CONFLICT WITH AGREEMENT

In the event of any irreconcilable conflict or inconsistency between the provisions of this Direct Agreement and the Agreement, the provisions of this Direct Agreement shall prevail.

IN WITNESS WHEREOF, each of the parties hereto has caused this Direct Agreement to be duly executed by its duly authorized officer as of the date first written above.

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

[COLLATERAL AGENT BANK], AS COLLATERAL AGENT

By: _____

Name: _____

Title: _____

[DEVELOPER]

By: _____

Name: _____

Title: _____

SCHEDULE A

Form of Substitute Accession Agreement

[Date]

To: California Department of Transportation
For the attention of: [_____]]
[Lenders and other parties to Financing Documents to be listed]
[insert address]
For the attention of: [•]

From: [Substituted Entity]

PRESIDIO PARKWAY PROJECT: SUBSTITUTE ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Public-Private Partnership Agreement, dated as of _____, 20__ (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Agreement**") between the California Department of Transportation (the Department) and [Developer's name] (Developer) and the Direct Agreement, dated as of _____, 20__ (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Direct Agreement**") among the Department, Developer and _____ [Collateral Agent Bank or Trustee], as Collateral Agent. Terms defined in the Direct Agreement and not otherwise defined herein have the respective meanings set forth in or incorporated into in the Direct Agreement.

1. The undersigned ("we") hereby confirms that it is a Substituted Entity pursuant to Sections 10 and 11 of the Direct Agreement.

2. We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the Agreement and the Direct Agreement as a Substituted Entity and, accordingly, shall have the rights, powers and obligations of Developer under the Agreement and the Direct Agreement.

3. We hereby assume all duties, obligations and liabilities of Developer under the Contract Documents.

4. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Substituted Entity]

5. This Substitute Accession Agreement shall be governed by, and construed in accordance with, the law of the State of California applicable to contract to be performed within such State.

The terms set forth herein are hereby agreed to:

[Substituted Entity]

By: _____
Name: _____
Title: _____

Accepted:

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

SCHEDULE B

Initial Financing Documents

Funding Agreements

Document	Party 1	Party(ies) 2

Security Documents

Document	Party 1	Party(ies) 2

APPENDIX 15

FORM OF LETTER OF CREDIT

* If the letter of credit is to secure the performance obligations of the Lead Contractor or other Prime Contractor rather than Developer, then:

- (1) Developer or the Collateral Agent shall be named as the beneficiary;
- (2) The letter of credit shall include provisions, in form and substance acceptable to the Department, expressly authorizing assignment and transfer of the beneficiary rights to the Department without condition or limitation and expressly permitting the Department to draw without presentation of the original letter of credit;
- (3) The letter of credit shall include provisions, in form and substance acceptable to the Department, naming the Department as automatic and exclusive transferee beneficiary upon Final Acceptance; and
- (4) The draw conditions in paragraph 2 of the form of letter of credit shall be revised to reflect a failure of the Contractor to perform its contract obligations under the Contract between Developer and such Contractor.

LETTER OF CREDIT

**(D&C WORK, O&M DURING CONSTRUCTION – NTP2)
IRREVOCABLE STANDBY LETTER OF CREDIT**

ISSUER: _____

PLACE FOR PRESENTATION OF DRAFT: _____

(Name and Address of Bank/Branch -- MUST be a CALIFORNIA Bank/Branch)

APPLICANT: [Name of Developer]

BENEFICIARY: CALIFORNIA DEPARTMENT OF TRANSPORTATION

(Name and title of addressee)

(Street number)

(City, state, zip code)

LETTER OF CREDIT NUMBER: _____

PLACE AND DATE OF ISSUE: _____

AMOUNT: _____ **United States Dollars (US\$ _____)**

EXPIRATION DATE: _____

The Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of the California Department of Transportation (the "Department"), for any sum or sums up to the aggregate amount of _____ **United States Dollars (US\$ _____)**, available by draft at sight drawn on the Issuer. Any draft under this Letter of Credit shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. State one of the following:

"This drawing is due to the failure of _____ (Developer's name) _____ ("Developer") to perform certain obligations under an agreement _____ (include Permit #, Project # or Contract # as applicable) _____ between Developer and the Department (the "Agreement")."

or

"This drawing is due to the failure of Developer to deliver to the Department a new or replacement letter of credit, on the same terms, by the deadline set forth in the Agreement."

or

"This drawing is due to the fact that the Issuer does not meet the requirements set forth in the Agreement and Developer has failed to provide a substitute letter of credit issued by a qualified institution within the deadline set forth in the Agreement."

or

[Include another withdrawal conditions if established under agreement or applicable law].”

All drafts will be honored if presented to _____ (California Bank/Branch - Name & Address) on or before _____ (Expiration Date) or any extended expiration date.

Drawings by facsimile to facsimile number () _____ are acceptable (each such drawing, a "Fax Drawing") provided, however, that a Fax Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer's receipt of such Fax Drawing by calling Issuer at telephone number () _____. Issuer will acknowledge Beneficiary's presentment by e-mail to the e-mail address provided to Issuer in the Fax Drawing.

This Letter of Credit shall be automatically extended for successive periods of one year, without amendment, from the stated expiration date and each extended expiration date unless we send the Department written notice of our intent not to extend the credit; which notice must be sent at least 30 days prior to the expiration date of the original term hereof or any extended one year term, by registered or certified mail or overnight courier, to the Comptroller of the California Department of Transportation at the _____ (Addressee's office name, street name, city, state, zip code) , or any other address specified in writing to the Issuer at the above address by the (addressee's title) .

This Letter of Credit is subject to the rules of the "International Standby Practices" ISP98. If a conflict between ISP98 and California law should arise, California law shall prevail.

Issuer:

By: _____ (Authorized signature of Issuer) _____

APPENDIX 16

FORMS OF PERFORMANCE BOND, PAYMENT BOND AND MULTIPLE OBLIGEE RIDER

Appendix 16-A	Form of Performance Bond (D&C Work and O&M During Construction – NTP 2)*
Appendix 16-B	Form of Payment Bond (D&C Work and O&M During Construction – NTP 2)*
Appendix 16-C	Form of Multiple Obligee Rider for Performance Bond**
Appendix 16-D	Form of Multiple Obligee Rider for Payment Bond**

*If the bond is to secure the payment or performance obligations of Developer rather than the Lead Contractor or other Prime Contractor, then the form of bond shall be revised to reflect Developer as the “Principal” or “Contractor”, Department in place of Developer as the bond obligee, and this Agreement as the “Contract”.

** If the bond is to secure the payment or performance obligations of Developer rather than the Lead Contractor or other Prime Contractor, then the form of multiple obligee rider shall be revised to reflect the Department as the “Primary Obligee” and the Collateral Agent as the “Additional Obligee”.

PERFORMANCE BOND FOR PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

(To Accompany a Public-Private Partnership Agreement)

APPENDIX 16-A

FORM OF PERFORMANCE BOND

(D&C WORK AND O&M DURING CONSTRUCTION – NTP 2)

Contract No. _____

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS,

THAT WHEREAS, the State of California (the "State"), acting by and through the Department of Transportation (the "Department") has awarded to _____ (the "Developer" or "Obligee"), a Public-Private Partnership Agreement (the "Agreement") to design, build, finance, operate and maintain the Presidio Parkway project located in the City and County of San Francisco, California (the "Project") through a public-private partnership, as authorized under Section 143 of the Streets and Highways Code;

AND WHEREAS, _____ [Contractor Name], an entity duly authorized to do business in the State of California and having its principal place of business at _____ [Street Address, City, State, Zip and Phone #] (the "Principal" or "Contractor") has entered into a contract (the "Contract") with Developer bearing the date of _____, related to the performance of design, construction, operations and maintenance work for the Project, which Contract is specifically incorporated by reference herein;

AND WHEREAS, it is one of the conditions of the Contract and the Agreement that these presents shall be executed;

NOW THEREFORE, We the undersigned Principal and _____ (the "Surety" or "Co-Sureties") are held and firmly bound unto the Obligee, in the sum of _____ United States Dollars (\$US _____), to be paid to the Obligee for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

1. If the above bound Principal, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform the covenants, conditions, and agreements in the Contract, including any and all amendments, supplements, and alterations made to the Contract as therein provided, on the Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify and save harmless the Obligee, its directors, officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and virtue.

2. This Bond shall cover the cost to complete the work required pursuant to the Contract except operations and maintenance work after the Substantial Completion Date (as defined in the Agreement) (the "Work").

PERFORMANCE BOND FOR PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

(To Accompany a Public-Private Partnership Agreement)

3. The obligations covered by this Bond specifically include liability for liquidated damages and warranties as specified in the Contract, but not to exceed the bonded sum.

4. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of an Obligee entitled to recover under this Bond, or any fraud practiced by any other person other than an Obligee seeking to recover from this Bond, shall in any way affect the obligations of the Surety (or Co-Sureties) on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications. The Surety (or Co-Sureties) agree(s) that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this Bond will not be considered payment bond claims.

5. Whenever the Principal shall be, and is declared by Developer to be, in default under the Contract, provided that Developer is not then in material default thereunder, the Surety (or Co-Sureties) shall promptly:

(a) remedy such default, or

(b) complete the work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, or

(c) select a contractor or contractors to complete all work covered by this Bond for which a notice to proceed has been issued in accordance with the terms and conditions of the Contract then in effect, using a contractor or contractors approved by the Department as required by the Agreement (provided, however, that the Surety may not select the Principal or any affiliate of the Principal to complete the work for and on behalf of the Surety without Developer's express written consent), arrange for a contract meeting the requirements of the Agreement between such contractor or contractors and Developer, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the contract price; but not exceeding, including other costs and damages for which Surety (or Co-Sureties) is (are) liable hereunder, the bonded sum;.

6. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this ____ day of _____ 20____.

PERFORMANCE BOND FOR PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

(To Accompany a Public-Private Partnership Agreement)

Correspondence or claims relating to this Bond should be sent to the Surety (or Sureties) at the following address:

[Note: If more than one surety, then add Appropriate number of lines to signature block.]

(Principal's name, title, and signature)

Surety

By: _____

Attorney-in-Fact

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.

ADA Notice: For individuals with sensory disabilities, this document may be available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

PERFORMANCE BOND FOR PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

(To Accompany a Public-Private Partnership Agreement)

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

State of _____

County of _____

On this ___ day of _____ in the year of _____ before me, a notary public in and for the county and state aforesaid, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal:

_____ (SEAL) _____

Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

State of _____

County of _____

On this ___ day of _____ in the year of _____ before me, a notary public in and for the county and state aforesaid, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal:

_____ (SEAL) _____

Signature of Notary Public

PERFORMANCE BOND FOR PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

(To Accompany a Public-Private Partnership Agreement)

APPENDIX 16-B

FORM OF PAYMENT BOND

(D&C WORK AND O&M DURING CONSTRUCTION – NTP 2)

Contract No. _____

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS,

THAT WHEREAS, The State of California (the “State”), acting by and through the Department of Transportation (the “Department”) has awarded to _____ (the “Developer” or “Obligee”), a Public-Private Partnership Agreement (the “Agreement”) to design, build, finance, operate and maintain the Presidio Parkway project located in the City and County of San Francisco, California (the “Project”) through a public-private partnership, as authorized under Section 143 of the Streets and Highways Code;

AND WHEREAS, _____ [Contractor Name] an entity duly authorized to do business in the State of California and having its principal place of business at _____ [Street Address, City, State, Zip and Phone #] (the “Principal” or “Contractor”) has entered into a contract (the “Contract”) with Developer bearing the date of _____, related to the performance of design, construction, operations and maintenance work for the Project, which Contract is specifically incorporated by reference herein;

AND WHEREAS, it is one of the conditions of the Contract and the Agreement that these presents shall be executed;

NOW THEREFORE, We the undersigned Principal and _____ (the “Surety” or “Co-Sureties”) are held and firmly bound unto the Obligee, in the sum of _____ United States Dollars (\$US _____), to be paid to the Obligee for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

1. If said Principal, or its heirs, executors, administrators successors or assigns or subcontractors, shall fail to pay:
 - (a) any of the persons named in California Civil Code Section 3181 involved in prosecution of the design and engineering services, as provided for in the Contract, or
 - (b) any amounts due under the Unemployment Insurance Code, with respect to work or labor performed by such claimant under the Contract or subcontracts, or
 - (c) any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Principal and its subcontractors pursuant to Revenue and Taxation Code Section 18662 et seq. with respect to such work and labor, or

PERFORMANCE BOND FOR PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

(To Accompany a Public-Private Partnership Agreement)

(d) anyone required to be paid by law

then the Surety (or Co-Sureties) herein shall pay for the same, in an aggregate amount not exceeding the sum specified in this Bond, otherwise the above obligation shall be null and void. In case suit is brought upon this Bond, the Surety (or Co-Sureties) will pay reasonable attorney's fee to be fixed by the court.

2. This Bond shall inure to the benefit of any of the persons named in Civil Code Section 3181 or anyone required to be paid by law under the Contract so as to give a right of action to such persons or their assigns in any suit brought upon this Bond.

3. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

4. This Bond shall cover all payment obligations under the Contract except obligations to pay for operations and maintenance work performed after the Substantial Completion Date as defined in the Agreement.

5. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Obligee and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____."

In Witness Whereof, We have hereunto set our hands and seals on this _____ day of _____.

Correspondence or claims relating to this Bond should be sent to the Surety (or Sureties) at the following address:

(Principal's name, title, and signature)

Surety

By: _____

Attorney-in-Fact

PERFORMANCE BOND FOR PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

(To Accompany a Public-Private Partnership Agreement)

**[Note: If more than one surety, then add
Appropriate number of lines to signature
block.]**

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.

ADA Notice: For individuals with sensory disabilities, this document may be available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

State of _____

County of _____

On this ___ day of _____ in the year of _____ before me, a notary public in and for the county and state aforesaid, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal:

_____ (SEAL) _____

Signature of Notary Public

PERFORMANCE BOND FOR PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

(To Accompany a Public-Private Partnership Agreement)

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

State of _____

County of _____

On this ____ day of _____ in the year of _____ before me, a notary public in and for the county and state aforesaid, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal:

_____ (SEAL) _____

Signature of Notary Public

PERFORMANCE BOND FOR PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

(To Accompany a Public-Private Partnership Agreement)

APPENDIX 16-C

FORM OF MULTIPLE OBLIGEE RIDER

(Performance Bond)

MULTIPLE OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No. _____.

WHEREAS, on or about the ____ day of _____, 20__, _____, (hereinafter called the "Principal"), entered into a written agreement bearing the date of _____, 20__ (hereinafter called the "Contract") with _____, (hereinafter called the "Primary Obligee") for the performance of design, construction, operations and maintenance for the Presidio Parkway project in the City and County of San Francisco; and

WHEREAS, the Primary Obligee requires that Principal provide a performance bond and that the California Department of Transportation (the "Department"), _____ and _____ be named as additional obligees under the performance bond; and

WHEREAS, Principal and the Surety have agreed to execute and deliver this Rider concurrently with the execution of Performance Bond No. _____ (hereinafter referred to as "Performance Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

The Department, _____, and _____ are hereby added to the Performance Bond as named obligees (hereinafter referred to as "Additional Obligees").

The Surety shall not be liable under the Performance Bond to the Primary Obligee, the Additional Obligees, or any of them, unless the Primary Obligee, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Contract.

The aggregate liability of the Surety under this Performance Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Performance Bond. The Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, provided that the Additional Obligees have received notice and 30 days prior opportunity to cure breach or default by the Primary Obligee under the Contract. The total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract.

PERFORMANCE BOND FOR PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

(To Accompany a Public-Private Partnership Agreement)

The Surety may, at its option, make any payments under the Performance Bond by check issued jointly to all of the obligees.

In the event of a conflict between the Performance Bond and this Rider, this Rider shall govern and control. All references to the Performance Bond, either in the Performance Bond or in this Rider, shall include and refer to the Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Performance Bond shall be and remains in full force and effect.

Signed, sealed and dated this _____ day of _____, 20_____.

(Principal)
(Seal)

By: _____

(Title)

(Surety)
(Seal)

By: _____

, Attorney-in-Fact

APPENDIX 16-D

FORM OF MULTIPLE OBLIGEE RIDER

(Payment Bond)

MULTIPLE OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Payment Bond No. _____.

WHEREAS, on or about the ____ day of _____, 20__, _____, (hereinafter called the "Principal"), entered into a written agreement bearing the date of _____, 20__ hereinafter called the "Contract") with _____, (hereinafter called the "Primary Obligees") for the performance of design, construction, operations and maintenance for the Presidio Parkway project in the City and County of San Francisco; and

WHEREAS, the Primary Obligees requires that Principal provide a payment bond and that the California Department of Transportation (the "Department"), _____ and _____ be named as additional obligees under the payment bond; and

WHEREAS, Principal and the Surety have agreed to execute and deliver this Rider concurrently with the execution of Payment Bond No. _____ (hereinafter referred to as "Payment Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

The Department, _____, and _____ are hereby added to the Payment Bond as named obligees (hereinafter referred to as "Additional Obligees").

The Surety shall not be liable under the Payment Bond to the Primary Obligees, the Additional Obligees, the claimants under the Payment Bond, or any of them, unless the Primary Obligees, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligees shall have occurred and be continuing under the Contract.

The aggregate liability of the Surety under this Payment Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Payment Bond. The Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligees and/or the claimants under the Payment Bond, provided that the Additional Obligees have received notice and 30 days prior opportunity to cure breach or default by the Primary Obligees under the Contract.

The Surety may, at its option, make any payments under the Payment Bond by check issued jointly to all of the obligees.

PERFORMANCE BOND FOR PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

(To Accompany a Public-Private Partnership Agreement)

In the event of a conflict between the Payment Bond and this Rider, this Rider shall govern and control. All references to the Payment Bond, either in the Payment Bond or in this Rider, shall include and refer to the Payment Bond as supplemented and amended by this Rider. Except as herein modified, the Payment Bond shall be and remains in full force and effect.

Signed, sealed and dated this ____ day of _____, 20_____.

(Principal)
(Seal)

By: _____

(Title)

(Surety)
(Seal)

By: _____

, Attorney-in-Fact

APPENDIX 17

[RESERVED]

APPENDIX 18

[RESERVED]

APPENDIX 19

CALIFORNIA LABOR CODE REQUIREMENTS

A. Worker's Compensation

Developer shall comply with the provisions of Section 3700 of the California Labor Code which require every employer to secure the payment of worker's compensation to its employees either through insurance against liability for workers' compensation or through self-insurance in accordance with the provisions of that Code.

B. Prevailing Wages

Pursuant to the provisions of Section 1773 of the California Labor Code, the Department will obtain the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided for in Section 1773.8 of said Code, apprenticeship or other training programs authorized by Section 3093 of said Code, and similar purposes) applicable to the Work, for straight time, overtime, Saturday, Sunday, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker concerned; provided that if the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the California Government Code. The general prevailing wage rates and any applicable changes to these wage rates are available at the Labor Compliance Office at the offices of the District Director of Transportation for the district in which the Work is situated. General prevailing wage rates and changes thereto are also available from the California Department of Industrial Relations' Internet Web Site at: <http://www.dir.ca.gov>. For crafts or classifications not shown on the prevailing wage determinations, Developer may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for Work.

If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the Department of Industrial Relations (DIR) for similar classifications of labor, Developer shall pay and cause its Contractors to pay not less than the higher wage rate. The DIR will not accept lower State wage rates that are not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination that is otherwise available for use by Developer and Contractors, Developer shall pay and cause its Contractors to pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

If the Division of Labor Standards Enforcement determines that employees of any Contractor were not paid the general prevailing rate of per diem wages, Developer shall withhold an amount of moneys due the Lead Engineering Firm, Lead Contractor or Lead Operations and Maintenance Firm, as applicable, sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. Developer shall pay any money retained from and owed to the Lead Engineering Firm, Lead Contractor or Lead Operations and Maintenance Firm, as applicable, upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice

of the resolution of the wage complaint has not been received by Developer within 180 days of date the Department issues its notice of Final Acceptance, Developer shall pay all moneys retained from the Lead Engineering Firm, Lead Contractor or Lead Operations and Maintenance Firm, as applicable, to the Department. These moneys shall be retained by the Department pending the final decision of an enforcement action.

Pursuant to Section 1773.2 of the Labor Code, Developer shall post general prevailing wage rates at a prominent place at the Site.

C. Hours of Work

Eight hours labor constitutes a legal day's work.

D. Apprenticeship

Developer shall comply with the provisions of Labor Code, Sections 1777.5 and 1777.6, and Title 8, Code of Regulations, Sections 200 et seq., relating to apprentice employment and training. Developer shall assume full responsibility for compliance with said sections with respect to all apprenticeable occupations upon the Project. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, Developer should, where some question exists, contact the Division of Apprenticeship Standards, S.F. District Office, 455 Golden Gate Avenue, 19th Floor, San Francisco, CA 94102, prior to commencement of the Work.

E. Labor Nondiscrimination

Developer's attention is directed to Section 1735 of the Labor Code, which reads as follows:

"A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.."

Developer's attention is directed to the following "Nondiscrimination Clause" that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

Nondiscrimination Clause

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

2. This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

F. Specific Labor Code Provisions

Developer's attention is directed to the following requirements of the Labor Code. Developer shall include in every Contract to which Developer is a party, and shall require that they be included in all Contracts at lower tiers, a copy of each such Code section.

Labor Code Section 1771

1771. Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

Labor Code Section 1775

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than ten dollars (\$10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than twenty dollars (\$20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than thirty dollars (\$30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor

Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) When the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

Labor Code Section 1776

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated

only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

Regulations implementing Labor Code Section 1776 are located in Sections 16000, 16400, 16401, 16402, 16403, and 16500 of Title 8, California Code of Regulations.

Labor Code Section 1777.5

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program.

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body.

Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an

apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

Labor Code Section 1810

1810. Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part of all contracts to which the State or any municipal corporation therein is a party.

Labor Code Section 1811

1811. The time of service of any workman employed upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815.

Labor Code Section 1812

1812. Every contractor and subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the awarding body and to the Division of Labor Standards Enforcement.

Labor Code Section 1813

1813. The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

Labor Code Section 1815

1815. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

APPENDIX 20

FEDERAL REQUIREMENTS

<u>Appendix Description</u>	<u>No. of Pages</u>
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Attachment 2 – FHWA Form 1273	23
Attachment 3 – Federal Prevailing Wage Rate	30
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Attachment 5 – Lobbying Certification	2
Attachment 6 – Compliance with Buy America Requirements	2

ATTACHMENT 1 TO APPENDIX 20

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION FACILITIES

GENERAL. — The work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Appendix 20. Whenever in said required contract provisions references are made to:

(a) "SHA contracting officer", "SHA resident engineer", or "authorized representative of the SHA", such references shall be construed to mean the California Department of Transportation (the "Department") or its Authorized Representative;

(b) "contractor", "prime contractor", "bidder" or "prospective primary participant", such references shall be construed to mean Developer or its authorized representative and/or the Lead Contractor or its authorized representative, as may be appropriate under the circumstances;

(c) "contract" or "prime contract", such references shall be construed to mean the Contract(s) between Developer and the Lead Contractor;

(d) "subcontractor", "supplier", "vendor", "prospective lower tier participant" or "lower tier subcontractor", such references shall be construed to mean, as appropriate, Contractors other than the Lead Contractor; and

(e) "department", "agency" or "department or agency entering into this transaction", such references shall be construed to mean the Department, except where a different department or agency is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, "Nondiscrimination," and Section VII, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, Developer shall cause the contractor to comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VII of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or

indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING. — Part 26, Title 49, Code of Federal Regulations applies to this Facility. Pertinent sections of said Code are incorporated within other sections of the Contract and the Department's UDBE/DBE Program adopted pursuant to 49 CFR Part 26.

CONVICT PRODUCED MATERIALS

a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.

b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

FHWA FORM 1273 SECTIONS VII.1 AND VII.2 INAPPLICABLE – Pursuant to 23 CFR 635.116(d), the requirements of Sections VII.1 and VII.2 of FHWA Form 1273 (Attachment 2 to this Appendix 20) are inapplicable to the Agreement.

ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), Developer and its Contractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of Developer and Contractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), Developer and its Contractors shall retain all such books, documents, papers, and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.

b. Developer agrees to include this section in each Contract at each tier, without modification except as appropriate to identify the Contractor who will be subject to its provisions.

AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) REQUIREMENTS

a. Access of Government Accountability Office. As required by Section 902 of the ARRA (H.R. 1, 111th Cong. § 902 (2009)), each Contract awarded by Developer or its Contractors shall provide that the Comptroller General and his representatives are authorized: (1) to examine any records of Developer or any of its Contractors, or any State or local agency administering such Contract, that directly pertain to, and involve transactions relating to, the Contract or subcontract; and (2) to interview any officer or employee of Developer or any of its Contractors, or of any State or local government agency administering the Contract, regarding such transactions.

b. Access of Offices of Inspector General to Certain Records and Employees. As required by Section 1515 of the ARRA (H.R. 1, 111th Cong. § 1515 (2009)), with respect to each Contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized: (1) to examine any records of Developer or grantee, any of its Contractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the Contract, subcontract, grant, or subgrant; and (2) to interview any officer or employee of Developer, grantee, subgrantee, or agency regarding such transactions.

c. Monthly Employment Report. Sections 1201 and 1512 of the ARRA (H.R. 1, 111th Cong. §§ 1201, 1512) require the submission of certain employment information from all contracts funded in whole or in part with ARRA funding. Developer shall complete a form indicating the number of jobs created or sustained under the Agreement, the total number of hours worked by these employees, and the total base wages paid to them. This same information shall be reported for every one of Developer's Contractors. The Department will provide Developer with a copy of form CEM-1204, "American Recovery and Reinvestment Act Monthly Employment Report." A copy of the form is available at:

<http://www.dot.ca.gov/hq/construc/forms.htm>.

Developer must complete form CEM-1204 and submit it to the Department by the 5th of each month with information reported for the previous month. A form must be submitted each month after NTP 1.

ATTACHMENT 2 TO APPENDIX 20
REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS
FHWA Form 1273

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I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
 - Section I, paragraph 2;
 - Section IV, paragraphs 1, 2, 3, 4, and 7;
 - Section V, paragraphs 1 and 2a through 2g.
5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
6. Selection of Labor: During the performance of this contract, the contractor shall not:
 - a. discriminate against labor from any other State, possession, or territory of the United States [Note: Not applicable to Project - (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A)], or
 - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
 - b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, preapprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
 - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
 - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
 - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

- 7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
- b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
- c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

- 9. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
 - i. The number of minority and non-minority group members and women employed in each work classification on the project;
 - ii. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 - iii. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 - iv. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
 - b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- 1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- 2. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit

directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

3. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.
- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the

time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 - i. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 - ii. the additional classification is utilized in the area by the construction industry;
 - iii. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - iv. with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour

Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

- a. Apprentices:
 - i. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
 - ii. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the

applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

- iii. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
- iv. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

- i. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
- ii. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered

program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

- iii. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
- iv. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

- d. Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as

much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related

subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3)

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. [Note: Not applicable to Project - In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1.] Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime

contractor is responsible for the submission of copies of payrolls by all subcontractors.

- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - i. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
 - ii. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
 - iii. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis,

highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

- a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
 - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
 - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
 - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the Project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of

these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

**NOTICE TO ALL PERSONNEL ENGAGED ON
FEDERAL-AID HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:

- *"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*
- *Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*
- *Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*
- *Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage

sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--
Primary Covered Transactions**

- 1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
 - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to

which this proposal is submitted for assistance in obtaining a copy of those regulations.

- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--
Lower Tier Covered Transactions:**

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT 3 TO APPENDIX 20

**FEDERAL PREVAILING WAGE RATE
(Subject to change)**

The prevailing wage rates for the Work through Final Acceptance shall be those set forth under the prevailing wage general decision for highway construction projects in San Francisco County, California as published on the Department's website on the date that is ten days before the Proposal Submission Date. Such prevailing wage rates are found at <http://www.dot.ca.gov/hq/esc/oe/federal-wages> and set forth below.

General Decision Number: CA100029 07/02/2010 CA29
Superseded General Decision Number: CA20080029
State: California
Construction Types: Building, Heavy (Heavy and Dredging) and Highway
Counties: Alameda, Calaveras, Contra Costa, Fresno, Kings, Madera, Mariposa, Merced, Monterey, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Stanislaus and Tuolumne Counties in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS
Modification Number Publication Date

- 0 03/12/2010
- 1 03/19/2010
- 2 04/02/2010
- 3 05/28/2010
- 4 06/11/2010
- 5 06/25/2010
- 6 07/02/2010

ASBE0016-001 01/01/2010

AREA 1: ALAMEDA, CONTRA COSTA, LAKE, MARIN, MENDOCINO, MONTEREY, NAPA, SAN BENITO, SAN FRANCISCO, SAN MATEO, SANTA CLARA, SANTA CRUZ, SOLANO, & SONOMA COUNTIES
AREA 2: ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, DEL NORTE, EL DORADO, FRESNO, GLENN, HUMBOLDT, KINGS, LASSEN, MADERA, MARIPOSA, MERCED, MODOC, MONO, NEVADA, PLACER, PLUMAS, SACRAMENTO, SAN JOAQUIN, SHASTA, SIERRA, SISKIYOU, STANISLAU, SUTTER, TEHEMA, TRINITY, TULARE, TUOLUMNE, YOLO, & YUBA COUNTIES

Rates Fringes
Asbestos Workers/Insulator
(Includes the application of all insulating materials, Protective Coverings, Coatings, and Finishes to all types of mechanical systems)
Area 1.....\$ 50.43 16.66
Area 2.....\$ 39.78 16.66

ASBE0016-004 01/01/2010

Rates Fringes
Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal,

scrapping, vacuuming, bagging
and disposing of all
insulation materials from
mechanical systems, whether
they contain asbestos or not)....\$ 15.18 2.80

BOIL0549-001 01/01/2009
AREA 1: ALAMEDA, CONTRA COSTA, SAN FRANCISCO, SAN MATEO & SANTA
CLARA COUNTIES
AREA 2: REMAINING COUNTIES
Rates Fringes
BOILERMAKER
Area 1.....\$ 40.17 22.32
Area 2.....\$ 37.01 22.25

BRCA0003-001 08/01/2008
Rates Fringes
MARBLE FINISHER.....\$ 28.02 12.12

BRCA0003-003 08/01/2008
Rates Fringes
MARBLE MASON.....\$ 39.22 18.58

BRCA0003-005 05/01/2009
Rates Fringes
BRICKLAYER
(1) Fresno, Kings,
Madera, Mariposa, Merced....\$ 32.74 16.81
(7) San Francisco, San
Mateo.....\$ 38.73 18.97
(8) Alameda, Contra
Costa, San Benito, Santa
Clara.....\$ 38.01 17.39
(9) Calaveras, San
Joaquin, Stanislaus,
Toulumne.....\$ 33.49 16.00
(16) Monterey, Santa Cruz...\$ 34.04 20.14

BRCA0003-008 07/01/2009
Rates Fringes
TERRAZZO FINISHER.....\$ 30.25 11.57
TERRAZZO WORKER/SETTER.....\$ 38.93 19.32

BRCA0003-011 04/01/2009
AREA 1: Alameda, Contra Costa, Monterey, San Benito, San
Francisco, San Mateo, Santa Clara, Santa Cruz
AREA 2: Calaveras, San Joaquin, Stanislaus, Tuolumne
AREA 3: Fresno, Kings, Madera, Mariposa, Merced
Rates Fringes
TILE FINISHER
Area 1.....\$ 21.34 10.89
Area 2.....\$ 21.16 11.02
Area 3.....\$ 20.85 10.16
Tile Layer
Area 1.....\$ 38.51 12.17
Area 2.....\$ 34.31 12.12
Area 3.....\$ 29.70 11.46

CARP0034-001 07/01/2009
Rates Fringes

Diver
Assistant Tender, ROV
Tender/Technician.....\$ 35.75 24.16
Diver standby.....\$ 40.33 24.16
Diver Tender.....\$ 39.33 24.16
Diver wet.....\$ 80.66 24.16
Manifold Operator (mixed
gas).....\$ 44.33 24.16
Manifold Operator (Standby).\$ 39.33 24.16
DEPTH PAY (Surface Diving):
050 to 100 ft \$2.00 per foot
101 to 150 ft \$3.00 per foot
151 to 220 ft \$4.00 per foot

SATURATION DIVING:
The standby rate shall apply until saturation starts. The saturation diving rate applies when divers are under pressure continuously until work task and decompression are complete. The diver rate shall be paid for all saturation hours.

DIVING IN ENCLOSURES:
Where it is necessary for Divers to enter pipes or tunnels, or other enclosures where there is no vertical ascent, the following premium shall be paid: Distance traveled from entrance 26 feet to 300 feet: \$1.00 per foot. When it is necessary for a diver to enter any pipe, tunnel or other enclosure less than 48" in height, the premium will be \$1.00 per foot.

WORK IN COMBINATION OF CLASSIFICATIONS:
Employees working in any combination of classifications within the diving crew (except dive supervisor) in a shift are paid in the classification with the highest rate for that shift.

CARP0034-003 07/01/2009
Rates Fringes
Piledriver.....\$ 35.75 24.16

CARP0035-002 07/01/2009
AREA 1: Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara counties
AREA 2: Monterey, San Benito, Santa Cruz Counties
AREA 4: Calaveras, Fresno, Kings, Madera, Mariposa, Merced, San Joaquin, Stanislaus, Tuolumne Counties

Rates Fringes
CARPENTER
AREA 1:
(1) Carpenter.....\$ 36.50 20.96
(2) Hardwood Floorlayer;
Shingler; Power Saw
Operator; Steel Scaffold
& Steel Shoring Erector;
Saw Filer.....\$ 36.65 20.96
(3) Bridge Builder.....\$ 36.50 20.96
(4) Millwright.....\$ 36.60 22.55

AREA 2:
(1) Carpenter.....\$ 30.62 20.96
(2) Hardwood Floorlayer;
Shingler; Power Saw
Operator; Steel Scaffold
& Steel Shoring Erector;

Saw Filer.....\$ 30.77 20.96
 (3) Bridge Builder.....\$ 36.50 20.96
 (4) Millwright.....\$ 33.12 22.55
 AREA 4:
 (1) Carpenter.....\$ 29.27 20.96
 (2) Hardwood Floorlayer;
 Shingler; Power Saw
 Operator; Steel Scaffold
 & Steel Shoring Erector;
 Saw Filer.....\$ 29.42 20.96
 (3) Bridge Builder.....\$ 36.50 20.96
 (4) Millwright.....\$ 31.77 22.55

CARP0035-007 07/01/2009

AREA 1: Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara counties

AREA 2: Monterey, San Benito, Santa Cruz Counties

AREA 3: Calaveras, Fresno, Kings, Madera, Mariposa, Merced, San Joaquin, Stanislaus, Tuolumne Counties

Rates Fringes

Modular Furniture Installer

Area 1

Installer I.....\$ 21.60 13.89
 Installer II.....\$ 18.17 13.89
 Lead Installer.....\$ 25.05 14.39
 Master Installer.....\$ 29.27 14.39

Area 2

Installer I.....\$ 18.95 13.89
 Installer II.....\$ 16.00 14.39
 Lead Installer.....\$ 21.92 14.39
 Master Installer.....\$ 25.55 14.39

Area 3

Installer I.....\$ 18.00 13.89
 Installer II.....\$ 15.23 13.89
 Lead Installer.....\$ 20.80 14.39
 Master Installer.....\$ 24.22 14.39

CARP0035-008 08/01/2009

AREA 1: Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara counties

AREA 2: Monterey, San Benito, Santa Cruz Counties

AREA 4: Calaveras, Fresno, Kings, Madera, Mariposa, Merced, San Joaquin, Stanislaus, Tuolumne Counties

Rates Fringes

Drywall Installers/Lathers:

Area 1.....\$ 36.50 21.40
 Area 2.....\$ 30.62 21.40
 Area 4.....\$ 29.77 21.40

Drywall Stocker/Scrapper

Area 1.....\$ 18.25 13.29
 Area 2.....\$ 15.31 13.29
 Area 4.....\$ 14.89 13.29

ELEC0006-001 12/01/2008

ALAMEDA, CONTRA COSTA, MONTEREY, SAN BENITO, SAN FRANCISCO, SAN MATEO, SANTA CLARA, AND SANTA CRUZ COUNTIES

Rates Fringes

Sound & Communications

Installer.....\$ 29.87 3%+11.95
 Technician.....\$ 34.01 3%+11.95

SCOPE OF WORK: Including any data system whose only function is to transmit or receive information; excluding all other data systems or multiple systems which include control function or power supply; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding fire alarm work when installed in raceways (including wire and cable pulling) and when performed on new or major remodel building projects or jobs for which the conductors for the fire alarm system are installed in conduit; excluding installation of raceway systems, line voltage work, industrial work, life-safety systems (all buildings having floors located more than 75' above the lowest floor level having building access); excluding energy management systems.

FOOTNOTE: Fire alarm work when installed in raceways (including wire and cable pulling), on projects which involve new or major remodel building construction, for which the conductors for the fire alarm system are installed in the conduit, shall be performed by the inside electrician.

ELEC0006-007 06/01/2009
SAN FRANCISCO COUNTY
Rates Fringes
ELECTRICIAN.....\$ 53.05 21.685

ELEC0006-008 12/01/2006
CALAVERAS, FRESNO, KINGS, MADERA, MARIPOSA, MERCED, SAN JOAQUIN, STANISLAUS AND TUOLUMNE COUNTIES

Rates Fringes
Communications System
Installer.....\$ 23.47 3%+10.65
Technician.....\$ 26.72 3%+10.65

SCOPE OF WORK: Including any data system whose only function is to transmit or receive information; excluding all other data systems or multiple systems which include control function or power supply; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding fire alarm work when installed in raceways (including wire and cable pulling) and when performed on new or major remodel building projects or jobs for which the conductors for the fire alarm system are installed in conduit; excluding installation of raceway systems, line voltage work, industrial work, life-safety systems (all buildings having floors located more than 75' above the lowest floor level having building access); excluding energy management systems.

FOOTNOTE: Fire alarm work when installed in raceways (including wire and cable pulling), on projects which involve new or major remodel building construction, for which the conductors for the fire alarm system are installed in the conduit, shall be performed by the inside electrician.

ELEC0100-002 06/01/2010
FRESNO, KINGS, AND MADERA COUNTIES
Rates Fringes
ELECTRICIAN.....\$ 32.35 3%+15.25

ELEC0100-005 12/01/2008

FRESNO, KINGS, MADERA

Rates Fringes

Communications System

Installer.....\$ 26.24 3%+11.95

Technician.....\$ 29.88 3%+11.95

SCOPE OF WORK

Includes the installation testing, service and maintenance, of the following systems which utilize the transmission and/or transference of voice, sound, vision and digital for commercial, education, security and entertainment purposes for the following: TV monitoring and surveillance, background-foreground music, intercom and telephone interconnect, inventory control systems, microwave transmission, multi-media, multiplex, nurse call system, radio page, school intercom and sound, burglar alarms, and low voltage master clock systems.

A. SOUND AND VOICE TRANSMISSION/TRANSFERENCE SYSTEMS

Background foreground music, Intercom and telephone interconnect systems, Telephone systems Nurse call systems, Radio page systems, School intercom and sound systems, Burglar alarm systems, Low voltage, master clock systems, Multi-media/multiplex systems, Sound and musical entertainment systems, RF systems, Antennas and Wave Guide,

B. FIRE ALARM SYSTEMS Installation, wire pulling and testing

C. TELEVISION AND VIDEO SYSTEMS Television monitoring and surveillance systems Video security systems, Video entertainment systems, Video educational systems, Microwave transmission systems, CATV and CCTV

D. SECURITY SYSTEMS Perimeter security systems Vibration sensor systems Card access systems Access control systems, Sonar/infrared monitoring equipment

E. COMMUNICATIONS SYSTEMS THAT TRANSMIT OR RECEIVE INFORMATION AND/OR CONTROL SYSTEMS THAT ARE INTRINSIC TO THE ABOVE LISTED SYSTEMS SCADA (Supervisory Control and Data Acquisition) PCM (Pulse Code Modulation) Inventory Control Systems, Digital Data Systems Broadband and Baseband and Carriers Point of Sale Systems, VSAT Data Systems Data Communication Systems RF and Remote Control Systems, Fiber Optic Data Systems

WORK EXCLUDED Raceway systems are not covered (excluding Ladder-Rack for the purpose of the above listed systems).

Chases and/or nipples (not to exceed 10 feet) may be installed on open wiring systems. Energy management systems. SCADA (Supervisory Control and Data Acquisition) when not intrinsic to the above listed systems (in the scope). Fire alarm systems when installed in raceways (including wire and cable pulling) shall be performed at the electrician wage rate, when either of the following two (2) conditions apply:

1. The project involves new or major remodel building trades construction.
2. The conductors for the fire alarm system are installed in conduit.

ELEC0234-001 06/01/2010

MONTEREY, SAN BENITO AND SANTA CRUZ COUNTIES

Rates Fringes

ELECTRICIAN.....\$ 41.20 21.49

ELEC0302-001 06/01/2010

CONTRA COSTA COUNTY

Rates Fringes

CABLE SPLICER.....\$ 52.49 3%+20.15
ELECTRICIAN.....\$ 46.21 3%+20.15

ELEC0332-001 11/30/2009

SANTA CLARA COUNTY

Rates Fringes

CABLE SPLICER.....\$ 54.71 3%+22.28
ELECTRICIAN.....\$ 47.57 3%+21.28

FOOTNOTES: Work under compressed air or where gas masks are required, or work on ladders, scaffolds, stacks, "Bosun's chairs," or other structures and where the workers are not protected by permanent guard rails at a distance of 40 to 60 ft. from the ground or supporting structures: to be paid one and one-half times the straight-time rate of pay. Work on structures of 60 ft. or over (as described above): to be paid twice the straight-time rate of pay.

ELEC0595-001 06/01/2010

ALAMEDA COUNTY

Rates Fringes

CABLE SPLICER.....\$ 50.06 23.67+3%
ELECTRICIAN.....\$ 44.50 23.67+3%

ELEC0595-002 12/01/2009

CALAVERAS AND SAN JOAQUIN COUNTIES

Rates Fringes

CABLE SPLICER.....\$ 37.13 7.5%+20.04
ELECTRICIAN

(1) Tunnel work.....\$ 34.65 7.5%+20.04
(2) All other work.....\$ 33.00 7.5%+20.04

ELEC0617-001 06/01/2009

SAN MATEO COUNTY

Rates Fringes

ELECTRICIAN.....\$ 50.00 20.83

ELEC0684-001 01/01/2010

MARIPOSA, MERCED, STANISLAUS AND TUOLUMNE COUNTIES

Rates Fringes

ELECTRICIAN.....\$ 34.10 3%+16.90
CABLE SPLICER = 110% of Journeyman Electrician

ELEC1245-001 06/01/2009

Rates Fringes

LINE CONSTRUCTION

(1) Lineman; Cable splicer..\$ 44.47 13.11
(2) Equipment specialist

(operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), overhead & underground distribution

line equipment).....\$ 35.52 12.07

(3) Groundman.....\$ 27.17 11.82
(4) Powderman.....\$ 39.71 12.23

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day

and day after Thanksgiving, Christmas Day

ELEV0008-001 01/01/2010

Rates Fringes

ELEVATOR MECHANIC.....\$ 54.89 20.035

FOOTNOTE:

PAID VACATION: Employer contributes 8% of regular hourly rate as vacation pay credit for employees with more than 5 years of service, and 6% for 6 months to 5 years of service.
PAID HOLIDAYS: New Years Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

ENGI0003-008 07/01/2009

Rates Fringes

Dredging: (DREDGING:

CLAMSHELL & DIPPER DREDGING;

HYDRAULIC SUCTION DREDGING:)

AREA 1:

(1) Leverman.....\$ 38.94 22.58

(2) Dredge Dozer; Heavy

duty repairman.....\$ 33.98 22.58

(3) Booster Pump

Operator; Deck

Engineer; Deck mate;

Dredge Tender; Winch

Operator.....\$ 32.86 22.58

(4) Bargeman; Deckhand;

Fireman; Leveehand; Oiler..\$ 29.56 22.58

AREA 2:

(1) Leverman.....\$ 40.94 22.58

(2) Dredge Dozer; Heavy

duty repairman.....\$ 35.98 22.58

(3) Booster Pump

Operator; Deck

Engineer; Deck mate;

Dredge Tender; Winch

Operator.....\$ 34.86 22.58

(4) Bargeman; Deckhand;

Fireman; Leveehand; Oiler..\$ 31.56 22.58

AREA DESCRIPTIONS

AREA 1: ALAMEDA, BUTTE, CONTRA COSTA, KINGS, MARIN, MERCED, NAPA, SACRAMENTO, SAN BENITO, SAN FRANCISCO, SAN JOAQUIN, SAN MATEO, SANTA CLARA, SANTA CRUZ, SOLANO, STANISLAUS, SUTTER, YOLO, AND YUBA COUNTIES

AREA 2: MODOC COUNTY

THE REMAINING COUNTIES ARE SPLIT BETWEEN AREA 1 AND AREA 2

AS NOTED BELOW:

ALPINE COUNTY:

Area 1: Northernmost part

Area 2: Remainder

CALAVERAS COUNTY:

Area 1: Remainder

Area 2: Eastern part

COLUSA COUNTY:

Area 1: Eastern part

Area 2: Remainder

ELDORADO COUNTY:

Area 1: North Central part

Area 2: Remainder

FRESNO COUNTY:
 Area 1: Remainder
 Area 2: Eastern part
 GLENN COUNTY:
 Area 1: Eastern part
 Area 2: Remainder
 LASSEN COUNTY:
 Area 1: Western part along the Southern portion of border
 with Shasta County
 Area 2: Remainder
 MADERA COUNTY:
 Area 1: Except Eastern part
 Area 2: Eastern part
 MARIPOSA COUNTY
 Area 1: Except Eastern part
 Area 2: Eastern part
 MONTERREY COUNTY
 Area 1: Except Southwestern part
 Area 2: Southwestern part
 NEVADA COUNTY:
 Area 1: All but the Northern portion along the border of
 Sierra County
 Area 2: Remainder
 PLACER COUNTY:
 Area 1: All but the Central portion
 Area 2: Remainder
 PLUMAS COUNTY:
 Area 1: Western portion
 Area 2: Remainder
 SHASTA COUNTY:
 Area 1: All but the Northeastern corner
 Area 2: Remainder
 SIERRA COUNTY:
 Area 1: Western part
 Area 2: Remainder
 SISKIYOU COUNTY:
 Area 1: Central part
 Area 2: Remainder
 SONOMA COUNTY:
 Area 1: All but the Northwestern corner
 Area 2: Remainder
 TEHAMA COUNTY:
 Area 1: All but the Western border with Mendocino & Trinity
 Counties
 Area 2: Remainder
 TRINITY COUNTY:
 Area 1: East Central part and the Northeastern border with
 Shasta County
 Area 2: Remainder
 TUOLUMNE COUNTY:
 Area 1: Except Eastern part
 Area 2: Eastern part

ENGI0003-018 06/29/2009

"AREA 1" WAGE RATES ARE LISTED BELOW

"AREA 2" RECEIVES AN ADDITIONAL \$2.00 PER HOUR ABOVE AREA 1
 RATES.

SEE AREA DEFINITIONS BELOW

Rates Fringes

OPERATOR: Power Equipment

(AREA 1:)
GROUP 1.....\$ 37.77 21.69
GROUP 2.....\$ 36.24 21.69
GROUP 3.....\$ 34.76 21.69
GROUP 4.....\$ 33.38 21.69
GROUP 5.....\$ 32.11 21.69
GROUP 6.....\$ 30.79 21.69
GROUP 7.....\$ 29.65 21.69
GROUP 8.....\$ 28.51 21.69
GROUP 8-A.....\$ 28.30 21.69

OPERATOR: Power Equipment
(Cranes and Attachments -
AREA 1:)

GROUP 1
Cranes.....\$ 38.65 21.69
Oiler.....\$ 29.39 21.69
Truck crane oiler.....\$ 31.68 21.69
GROUP 2
Cranes.....\$ 36.89 21.69
Oiler.....\$ 29.18 21.69
Truck crane oiler.....\$ 31.42 21.69
GROUP 3
Cranes.....\$ 35.14 21.69
Hydraulic.....\$ 30.79 21.69
Oiler.....\$ 28.90 21.69
Truck Crane Oiler.....\$ 31.18 21.69

OPERATOR: Power Equipment
(Piledriving - AREA 1:)

GROUP 1
Lifting devices.....\$ 38.99 21.69
Oiler.....\$ 29.73 21.69
Truck crane oiler.....\$ 32.01 21.69
GROUP 2
Lifting devices.....\$ 37.17 21.69
Oiler.....\$ 29.46 21.69
Truck Crane Oiler.....\$ 31.76 21.69
GROUP 3
Lifting devices.....\$ 35.49 21.69
Oiler.....\$ 29.24 21.69
Truck Crane Oiler.....\$ 31.47 21.69
GROUP 4.....\$ 33.72 21.69
GROUP 5.....\$ 31.08 21.69
GROUP 6.....\$ 28.85 21.69

OPERATOR: Power Equipment
(Steel Erection - AREA 1:)

GROUP 1
Cranes.....\$ 39.62 21.69
Oiler.....\$ 30.07 21.69
Truck Crane Oiler.....\$ 32.30 21.69
GROUP 2
Cranes.....\$ 37.85 21.69
Oiler.....\$ 29.80 21.69
Truck Crane Oiler.....\$ 32.08 21.69
GROUP 3
Cranes.....\$ 36.37 21.69
Hydraulic.....\$ 31.42 21.69
Oiler.....\$ 29.58 21.69
Truck Crane Oiler.....\$ 31.81 21.69
GROUP 4.....\$ 34.35 21.69
GROUP 5.....\$ 33.05 21.69

OPERATOR: Power Equipment
(Tunnel and Underground Work
- AREA 1:)

SHAFTS, STOPES, RAISES:

GROUP 1.....	\$ 33.87	21.69
GROUP 1-A.....	\$ 36.34	21.69
GROUP 2.....	\$ 32.61	21.69
GROUP 3.....	\$ 31.28	21.69
GROUP 4.....	\$ 30.14	21.69
GROUP 5.....	\$ 29.00	21.69

UNDERGROUND:

GROUP 1.....	\$ 33.77	21.69
GROUP 1-A.....	\$ 36.24	21.69
GROUP 2.....	\$ 32.51	21.69
GROUP 3.....	\$ 31.18	21.69
GROUP 4.....	\$ 30.04	21.69
GROUP 5.....	\$ 28.90	21.69

FOOTNOTE: Work suspended by ropes or cables, or work on a
Yo-Yo Cat: \$.60 per hour additional.

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 1: Operator of helicopter (when used in erection work);

Hydraulic excavator, 7 cu. yds. and over; Power shovels,
over 7 cu. yds.

GROUP 2: Highline cableway; Hydraulic excavator, 3-1/2 cu.
yds. up to 7 cu. yds.; Licensed construction work boat
operator, on site; Power blade operator (finish); Power
shovels, over 1 cu. yd. up to and including 7 cu. yds.
m.r.c.

GROUP 3: Asphalt milling machine; Cable backhoe; Combination
backhoe and loader over 3/4 cu. yds.; Continuous flight tie
back machine assistant to engineer or mechanic; Crane
mounted continuous flight tie back machine, tonnage to
apply; Crane mounted drill attachment, tonnage to apply;
Dozer, slope brd; Gradall; Hydraulic excavator, up to 3 1/2
cu. yds.; Loader 4 cu. yds. and over; Long reach excavator;
Multiple engine scraper (when used as push pull); Power
shovels, up to and including 1 cu. yd.; Pre-stress wire
wrapping machine; Side boom cat, 572 or larger; Track
loader 4 cu. yds. and over; Wheel excavator (up to and
including 750 cu. yds. per hour)

GROUP 4: Asphalt plant engineer/box person; Chicago boom;
Combination backhoe and loader up to and including 3/4 cu.
yd.; Concrete batch plant (wet or dry); Dozer and/or push
cat; Pull- type elevating loader; Gradesetter, grade
checker (GPS, mechanical or otherwise); Grooving and
grinding machine; Heading shield operator; Heavy-duty
drilling equipment, Hughes, LDH, Watson 3000 or similar;
Heavy-duty repairperson and/or welder; Lime spreader;
Loader under 4 cu. yds.; Lubrication and service engineer
(mobile and grease rack); Mechanical finishers or spreader
machine (asphalt, Barber-Greene and similar); Miller
Formless M-9000 slope paver or similar; Portable crushing
and screening plants; Power blade support; Roller operator,
asphalt; Rubber-tired scraper, self-loading (paddle-wheels,
etc.); Rubber- tired earthmoving equipment (scrapers); Slip
form paver (concrete); Small tractor with drag; Soil
stabilizer (P & H or equal); Spider plow and spider puller;
Tubex pile rig; Unlicensed constuction work boat operator,
on site; Timber skidder; Track loader up to 4 yds.;
Tractor-drawn scraper; Tractor, compressor drill

combination; Welder; Woods-Mixer (and other similar Pugmill equipment)

GROUP 5: Cast-in-place pipe laying machine; Combination slusher and motor operator; Concrete conveyor or concrete pump, truck or equipment mounted; Concrete conveyor, building site; Concrete pump or pumpcrete gun; Drilling equipment, Watson 2000, Texoma 700 or similar; Drilling and boring machinery, horizontal (not to apply to waterliners, wagon drills or jackhammers); Concrete mixer/all; Person and/or material hoist; Mechanical finishers (concrete) (Clary, Johnson, Bidwell Bridge Deck or similar types); Mechanical burm, curb and/or curb and gutter machine, concrete or asphalt); Mine or shaft hoist; Portable crusher; Power jumbo operator (setting slip-forms, etc., in tunnels); Screed (automatic or manual); Self-propelled compactor with dozer; Tractor with boom D6 or smaller; Trenching machine, maximum digging capacity over 5 ft. depth; Vermeer T-600B rock cutter or similar

GROUP 6: Armor-Coater (or similar); Ballast jack tamper; Boom- type backfilling machine; Assistant plant engineer; Bridge and/or gantry crane; Chemical grouting machine, truck-mounted; Chip spreading machine operator; Concrete saw (self-propelled unit on streets, highways, airports and canals); Deck engineer; Drilling equipment Texoma 600, Hughes 200 Series or similar up to and including 30 ft. m.r.c.; Drill doctor; Helicopter radio operator; Hydro-hammer or similar; Line master; Skidsteer loader, Bobcat larger than 743 series or similar (with attachments); Locomotive; Lull hi-lift or similar; Oiler, truck mounted equipment; Pavement breaker, truck-mounted, with compressor combination; Paving fabric installation and/or laying machine; Pipe bending machine (pipelines only); Pipe wrapping machine (tractor propelled and supported); Screed (except asphaltic concrete paving); Self-propelled pipeline wrapping machine; Soils & materials tester; Tractor; Self-loading chipper; Concrete barrier moving machine

GROUP 7: Ballast regulator; Boom truck or dual-purpose A-frame truck, non-rotating - under 15 tons; Truck-mounted rotating telescopic boom type lifting device, Manitex or similar (boom truck) - under 15 tons; Cary lift or similar; Combination slurry mixer and/or cleaner; Drilling equipment, 20 ft. and under m.r.c.; Firetender (hot plant); Grouting machine operator; Highline cableway signalperson; Stationary belt loader (Kolman or similar); Lift slab machine (Vagtborg and similar types); Maginnes internal full slab vibrator; Material hoist (1 drum); Mechanical trench shield; Pavement breaker with or without compressor combination); Pipe cleaning machine (tractor propelled and supported); Post driver; Roller (except asphalt); Chip Seal; Self-propelled automatically applied concrete curing machine (on streets, highways, airports and canals); Self-propelled compactor (without dozer); Signalperson; Slip-form pumps (lifting device for concrete forms); Tie spacer; Tower mobile; Trenching machine, maximum digging capacity up to and including 5 ft. depth; Truck- type loader

GROUP 8: Bit sharpener; Boiler tender; Box operator; Brakeperson; Combination mixer and compressor (shotcrete/gunite); Compressor operator; Deckhand; Fire tender; Forklift (under 20 ft.); Generator;

Gunite/shotcrete equipment operator; Hydraulic monitor; Ken seal machine (or similar); Mixermobile; Oiler; Pump operator; Refrigeration plant; Reservoir-debris tug (selfpropelled floating); Ross Carrier (construction site); Rotomist operator; Self-propelled tape machine; Shuttlecar; Self-propelled power sweeper operator (includes vacuum sweeper); Slusher operator; Surface heater; Switchperson; Tar pot firetender; Tugger hoist, single drum; Vacuum cooling plant; Welding machine (powered other than by electricity)

GROUP 8-A: Elevator operator; Skidsteer loader-Bobcat 743 series or smaller, and similar (without attachments); Mini excavator under 25 H.P. (backhoe-trencher); Tub grinder wood chipper

ALL CRANES AND ATTACHMENTS

GROUP 1: Clamshell and dragline over 7 cu. yds.; Crane, over 100 tons; Derrick, over 100 tons; Derrick barge pedestal-mounted, over 100 tons; Self-propelled boom-type lifting device, over 100 tons

GROUP 2: Clamshell and dragline over 1 cu. yd. up to and including 7 cu. yds.; Crane, over 45 tons up to and including 100 tons; Derrick barge, 100 tons and under; Self-propelled boom-type lifting device, over 45 tons; Tower crane

GROUP 3: Clamshell and dragline up to and including 1 cu. yd.; Cranes 45 tons and under; Self-propelled boom-type lifting device 45 tons and under; Boom Truck or dual purpose A-frame truck, non-rotating over 15 tons; Truck-mounted rotating telescopic boom type lifting device, Manitex or similar (boom truck) over 15 tons;

PILEDRIVERS

GROUP 1: Derrick barge pedestal mounted over 100 tons; Clamshell over 7 cu. yds.; Self-propelled boom-type lifting device over 100 tons; Truck crane or crawler, land or barge mounted over 100 tons

GROUP 2: Derrick barge pedestal mounted 45 tons to and including 100 tons; Clamshell up to and including 7 cu. yds.; Self-propelled boom-type lifting device over 45 tons; Truck crane or crawler, land or barge mounted, over 45 tons up to and including 100 tons; Fundex F-12 hydraulic pile rig

GROUP 3: Derrick barge pedestal mounted under 45 tons; Selfpropelled boom-type lifting device 45 tons and under; Skid/scow piledriver, any tonnage; Truck crane or crawler, land or barge mounted 45 tons and under

GROUP 4: Assistant operator in lieu of assistant to engineer; Forklift, 10 tons and over; Heavy-duty repairperson/welder

GROUP 5: Deck engineer

GROUP 6: Deckhand; Fire tender

STEEL ERECTORS

GROUP 1: Crane over 100 tons; Derrick over 100 tons; Selfpropelled boom-type lifting device over 100 tons

GROUP 2: Crane over 45 tons to 100 tons; Derrick under 100 tons; Self-propelled boom-type lifting device over 45 tons to 100 tons; Tower crane

GROUP 3: Crane, 45 tons and under; Self-propelled boom-type lifting device, 45 tons and under

GROUP 4: Chicago boom; Forklift, 10 tons and over; Heavy-duty

repair person/welder
GROUP 5: Boom cat

TUNNEL AND UNDERGROUND WORK

GROUP 1-A: Tunnel bore machine operator, 20' diameter or more
GROUP 1: Heading shield operator; Heavy-duty repairperson;
Mucking machine (rubber tired, rail or track type); Raised
bore operator (tunnels); Tunnel mole bore operator
GROUP 2: Combination slusher and motor operator; Concrete
pump or pumpcrete gun; Power jumbo operator
GROUP 3: Drill doctor; Mine or shaft hoist
GROUP 4: Combination slurry mixer cleaner; Grouting Machine
operator; Motorman
GROUP 5: Bit Sharpener; Brakeman; Combination mixer and
compressor (gunitite); Compressor operator; Oiler; Pump
operator; Slusher operator

AREA DESCRIPTIONS:

POWER EQUIPMENT OPERATORS, CRANES AND ATTACHMENTS, TUNNEL AND
UNDERGROUND [These areas do not apply to Piledrivers and
Steel Erectors]

AREA 1: ALAMEDA, BUTTE, CONTRA COSTA, KINGS, MARIN, MERCED,
NAPA, SACRAMENTO, SAN BENITO, SAN FRANCISCO, SAN JOAQUIN,
SAN MATEO, SANTA CLARA, SANTA CRUZ, SOLANO, STANISLAUS,
SUTTER, YOLO, AND YUBA COUNTIES

AREA 2 - MODOC COUNTY

THE REMAINING COUNTIES ARE SPLIT BETWEEN AREA 1 AND AREA 2 AS
NOTED BELOW:

ALPINE COUNTY:

Area 1: Northernmost part
Area 2: Remainder

CALAVERAS COUNTY:

Area 1: Except Eastern part
Area 2: Eastern part

COLUSA COUNTY:

Area 1: Eastern part
Area 2: Remainder

DEL NORTE COUNTY:

Area 1: Extreme Southwestern corner
Area 2: Remainder

ELDORADO COUNTY:

Area 1: North Central part
Area 2: Remainder

FRESNO COUNTY

Area 1: Except Eastern part
Area 2: Eastern part

GLENN COUNTY:

Area 1: Eastern part
Area 2: Remainder

HUMBOLDT COUNTY:

Area 1: Except Eastern and Southwestern parts
Area 2: Remainder

LAKE COUNTY:

Area 1: Southern part
Area 2: Remainder

LASSEN COUNTY:

Area 1: Western part along the Southern portion of border
with Shasta County
Area 2: Remainder

MADERA COUNTY

Area 1: Remainder
 Area 2: Eastern part
 MARIPOSA COUNTY
 Area 1: Remainder
 Area 2: Eastern part
 MENDOCINO COUNTY:
 Area 1: Central and Southeastern parts
 Area 2: Remainder
 MONTEREY COUNTY
 Area 1: Remainder
 Area 2: Southwestern part
 NEVADA COUNTY:
 Area 1: All but the Northern portion along the border of
 Sierra County
 Area 2: Remainder
 PLACER COUNTY:
 Area 1: All but the Central portion
 Area 2: Remainder
 PLUMAS COUNTY:
 Area 1: Western portion
 Area 2: Remainder
 SHASTA COUNTY:
 Area 1: All but the Northeastern corner
 Area 2: Remainder
 SIERRA COUNTY:
 Area 1: Western part
 Area 2: Remainder
 SISKIYOU COUNTY:
 Area 1: Central part
 Area 2: Remainder
 SONOMA COUNTY:
 Area 1: All but the Northwestern corner
 Area 2: Reaminder
 TEHAMA COUNTY:
 Area 1: All but the Western border with mendocino & Trinity
 Counties
 Area 2: Remainder
 TRINITY COUNTY:
 Area 1: East Central part and the Northeaster border with
 Shasta County
 Area 2: Remainder
 TULARE COUNTY;
 Area 1: Remainder
 Area 2: Eastern part
 TUOLUMNE COUNTY:
 Area 1: Remainder
 Area 2: Eastern Part

ENGI0003-019 06/29/2009
 SEE AREA DESCRIPTIONS BELOW
 Rates Fringes

OPERATOR: Power Equipment
 (LANDSCAPE WORK ONLY)
 GROUP 1
 AREA 1.....\$ 28.64 20.53
 AREA 2.....\$ 30.64 20.53
 GROUP 2
 AREA 1.....\$ 25.04 20.53
 AREA 2.....\$ 27.04 20.53
 GROUP 3

AREA 1.....\$ 20.43 20.53
AREA 2.....\$ 22.43 20.53

GROUP DESCRIPTIONS:

GROUP 1: Landscape Finish Grade Operator: All finish grade work regardless of equipment used, and all equipment with a rating more than 65 HP.

GROUP 2: Landscape Operator up to 65 HP: All equipment with a manufacturer's rating of 65 HP or less except equipment covered by Group 1 or Group 3. The following equipment shall be included except when used for finish work as long as manufacturer's rating is 65 HP or less: A-Frame and Winch Truck, Backhoe, Forklift, Hydragraphic Seeder Machine, Roller, Rubber-Tired and Track Earthmoving Equipment, Skiploader, Straw Blowers, and Trencher 31 HP up to 65 HP.

GROUP 3: Landscae Utility Operator: Small Rubber-Tired Tractor, Trencher Under 31 HP.

AREA DESCRIPTIONS:

AREA 1: ALAMEDA, BUTTE, CONTRA COSTA, KINGS, MARIN, MERCED, NAPA, SACRAMENTO, SAN BENITO, SAN FRANCISCO, SAN JOAQUIN, SAN MATEO, SANTA CLARA, SANTA CRUZ, SOLANO, STANISLAUS, SUTTER, YOLO, AND YUBA COUNTIES

AREA 2 - MODOC COUNTY

THE REMAINING COUNTIES ARE SPLIT BETWEEN AREA 1 AND AREA 2 AS NOTED BELOW:

ALPINE COUNTY:

Area 1: Northernmost part

Area 2: Remainder

CALAVERAS COUNTY:

Area 1: Except Eastern part

Area 2: Eastern part

COLUSA COUNTY:

Area 1: Eastern part

Area 2: Remainder

DEL NORTE COUNTY:

Area 1: Extreme Southwestern corner

Area 2: Remainder

ELDORADO COUNTY:

Area 1: North Central part

Area 2: Remainder

FRESNO COUNTY

Area 1: Except Eastern part

Area 2: Eastern part

GLENN COUNTY:

Area 1: Eastern part

Area 2: Remainder

HUMBOLDT COUNTY:

Area 1: Except Eastern and Southwestern parts

Area 2: Remainder

LAKE COUNTY:

Area 1: Southern part

Area 2: Remainder

LASSEN COUNTY:

Area 1: Western part along the Southern portion of border with Shasta County

Area 2: Remainder

MADERA COUNTY

Area 1: Remainder

Area 2: Eastern part

MARIPOSA COUNTY

Area 1: Remainder
Area 2: Eastern part
MENDOCINO COUNTY:
Area 1: Central and Southeastern parts
Area 2: Remainder
MONTEREY COUNTY
Area 1: Remainder
Area 2: Southwestern part
NEVADA COUNTY:
Area 1: All but the Northern portion along the border of
Sierra County
Area 2: Remainder
PLACER COUNTY:
Area 1: All but the Central portion
Area 2: Remainder
PLUMAS COUNTY:
Area 1: Western portion
Area 2: Remainder
SHASTA COUNTY:
Area 1: All but the Northeastern corner
Area 2: Remainder
SIERRA COUNTY:
Area 1: Western part
Area 2: Remainder
SISKIYOU COUNTY:
Area 1: Central part
Area 2: Remainder
SONOMA COUNTY:
Area 1: All but the Northwestern corner
Area 2: Reaminder
TEHAMA COUNTY:
Area 1: All but the Western border with mendocino & Trinity
Counties
Area 2: Remainder
TRINITY COUNTY:
Area 1: East Central part and the Northeaster border with
Shasta County
Area 2: Remainder
TULARE COUNTY;
Area 1: Remainder
Area 2: Eastern part
TUOLUMNE COUNTY:
Area 1: Remainder
Area 2: Eastern Part

* IRON0002-004 07/01/2010

Rates Fringes

Ironworkers:

Fence Erector.....\$ 26.58 15.26

Ornamental, Reinforcing
and Structural.....\$ 33.00 23.73

PREMIUM PAY:

\$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval
Reserve-Niland,

Edwards AFB, Fort Irwin Military Station, Fort Irwin Training
Center-Goldstone, San Clemente Island, San Nicholas Island,

Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine
Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

\$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base,
Naval Post Graduate School - Monterey, Yermo Marine Corps
Logistics Center
\$2.00 additional per hour at the following locations:
Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LABO0036-001 07/01/2007

SAN FRANCISCO AND SAN MATEO COUNTIES:

Rates Fringes

MASON TENDER, BRICK.....\$ 26.93 16.50

FOOTNOTES: Underground work such as sewers, manholes, catch
basins, sewer pipes, telephone conduits, tunnels and cut
trenches: \$5.00 per day additional. Work in live sewage:
\$2.50 per day additional.

LABO0036-002 07/01/2007

SAN FRANCISCO AND SAN MATEO COUNTIES:

Rates Fringes

PLASTER TENDER.....\$ 26.48 16.23

FOOTNOTES: Work on a suspended scaffold: \$5.00 per day
additional. Work operating a plaster mixer pump gun: \$1.00
per hour additional.

LABO0067-002 12/01/2008

AREA "A" - ALAMEDA, CONTRA COSTA, MARIN, SAN FRANCISCO, SAN
MATEO AND SANTA CLARA COUNTIES

AREA "B" - ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, DEL
NORTE, EL DORADO, FRESNO, GLENN, HUMBOLDT, KINGS, LAKE, LASSEN,
MADERA, MARIPOSA, MENDOCINO, MERCED, MODOC, MONTEREY, NAPA,
NEVADA, PLACER, PLUMAS, SACRAMENTO, SAN BENITO, SAN JOAQUIN,
SANTA CRUZ, SHASTA, SIERRA, SISKIYOU, SOLANO, SONOMA,
STANISLAUS, SUTTER, TEHAMA, TRINITY, TULARE, TUOLUMNE, YOLO AND
YUBA COUNTIES

Rates Fringes

Asbestos Removal Laborer

Areas A & B.....\$ 18.08 6.60

LABORER (Lead Removal)

Area A.....\$ 34.15 6.11

Area B.....\$ 33.15 6.11

ASBESTOS REMOVAL-SCOPE OF WORK: Site mobilization; initial
site clean-up; site preparation; removal of
asbestos-containing materials from walls and ceilings; or
from pipes, boilers and mechanical systems only if they are
being scrapped; encapsulation, enclosure and disposal of
asbestos-containing materials by hand or with equipment or
machinery; scaffolding; fabrication of temporary wooden
barriers; and assembly of decontamination stations.

LABO0067-003 07/01/2009

AREA A: ALAMEDA, CONTRA COSTA, MARIN, SAN FRANCISCO, SAN MATEO
& SANTA CLARA

AREA B: ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, DEL NORTE,
EL DORADO, FRESNO, GLENN, HUMBOLDT, KINGS, LAKE, LASSEN,
MADERA, MARIPOSA, MENOCINO, MERCED, MODOC, MONTEREY, NAPA,
NEVADA, PLACER, PLUMAS, SANCRMENTO, SAN BENITO, SAN JOAQUIN,
SANTA CRUZ, SIERRA, SHASTA, SISKIYOU, SOLANO, SONOMA,
STANISLAUS,TEHAMA,TRINITY, TULARE, TUOLUMNE, YOLO & YUBA
COUNTIES

Rates Fringes

LABORER (TRAFFIC CONTROL/LANE

CLOSURE)

Escort Driver, Flag Person

Area A.....\$ 26.89 14.93

Area B.....\$ 25.89 14.93

Traffic Control Person I

Area A.....\$ 27.19 14.93

Area B.....\$ 26.19 14.93

Traffic Control Person II

Area A.....\$ 24.69 14.93

Area B.....\$ 23.69 14.93

TRAFFIC CONTROL PERSON I: Layout of traffic control, crash cushions, construction area and roadside signage.

TRAFFIC CONTROL PERSON II: Installation and removal of temporary/permanent signs, markers, delineators and crash cushions.

LABO0067-006 06/29/2009

AREA "A" - ALAMEDA, CONTRA COSTA, MARIN, SAN FRANCISCO, SAN MATEO AND SANTA CLARA COUNTIES

AREA "B" - ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, EL DORADO, FRESNO, GLENN, KINGS, LASSEN, MADERA, MARIPOSA, MERCED, MODOC, MONTEREY, NAPA, NEVADA, PLACER, PLUMAS, SACRAMENTO, SAN BENITO, SAN JOAQUIN, SANTA CRUZ, SHASTA, SIERRA, SISKIYOU, SOLANO, SONOMA, STANISLAUS, SUTTER, TEHAMA, TRINITY, TULARE, TUOLUMNE, YOLO AND YUBA COUNTIES

Rates Fringes

Laborers: (CONSTRUCTION CRAFT

LABORERS - AREA A:)

Construction Specialist

Group.....\$ 27.84 14.93

GROUP 1.....\$ 27.14 14.93

GROUP 1-a.....\$ 27.36 14.93

GROUP 1-c.....\$ 27.19 14.93

GROUP 1-e.....\$ 27.69 14.93

GROUP 1-f.....\$ 27.72 14.93

GROUP 1-g (Contra Costa County).....\$ 27.34 14.93

GROUP 2.....\$ 26.99 14.93

GROUP 3.....\$ 26.89 14.93

GROUP 4.....\$ 20.58 14.93

See groups 1-b and 1-d under laborer classifications.

Laborers: (CONSTRUCTION CRAFT

LABORERS - AREA B:)

Construction Specialist

Group.....\$ 26.84 14.93

GROUP 1.....\$ 26.14 14.93

GROUP 1-a.....\$ 26.36 14.93

GROUP 1-c.....\$ 26.19 14.93

GROUP 1-e.....\$ 26.69 14.93

GROUP 1-f.....\$ 26.72 14.93

GROUP 2.....\$ 25.99 14.93

GROUP 3.....\$ 25.89 14.93

GROUP 4.....\$ 19.58 14.93

See groups 1-b and 1-d under laborer classifications.

Laborers: (GUNITE - AREA A:)

GROUP 1.....\$ 28.10 14.93

GROUP 2.....\$ 27.60 14.93

GROUP 3.....\$ 27.01 14.93

GROUP 4.....\$ 26.89 14.93

Laborers: (GUNITE - AREA B:)

GROUP 1.....\$ 27.10 14.93
GROUP 2.....\$ 26.60 14.93
GROUP 3.....\$ 26.01 14.93
GROUP 4.....\$ 25.89 14.93
Laborers: (WRECKING - AREA A:)
GROUP 1.....\$ 27.14 14.93
GROUP 2.....\$ 26.99 14.93
Laborers: (WRECKING - AREA B:)
GROUP 1.....\$ 26.14 14.93
GROUP 2.....\$ 25.99 14.93
Landscape Laborer (GARDENERS,
HORTICULTURAL & LANDSCAPE
LABORERS - AREA A:)
(1) New Construction.....\$ 26.89 14.93
(2) Establishment Warranty
Period.....\$ 20.58 14.59
Landscape Laborer (GARDENERS,
HORTICULTURAL & LANDSCAPE
LABORERS - AREA B:)
(1) New Construction.....\$ 25.89 14.93
(2) Establishment Warranty
Period.....\$ 19.58 14.59

FOOTNOTES:

Laborers working off or with or from bos'n chairs, swinging scaffolds, belts shall receive \$0.25 per hour above the applicable wage rate. This shall not apply to workers entitled to receive the wage rate set forth in Group 1-a below.

LABORER CLASSIFICATIONS

CONSTRUCTION SPECIALIST GROUP: Asphalt ironer and raker; Chainsaw; Laser beam in connection with laborers' work; Cast-in- place manhole form setter; Pressure pipelayer; Davis trencher - 300 or similar type (and all small trenchers); Blaster; Diamond driller; Multiple unit drill; Hydraulic drill
GROUP 1: Asphalt spreader boxes (all types); Barko, Wacker and similar type tampers; Buggymobile; Caulker, bander, pipewrapper, conduit layer, plastic pipelayer; Certified hazardous waste worker including Leade Abatement; Compactors of all types; Concrete and magnesite mixer, 1/2 yd. and under; Concrete pan work; Concrete sander; Concrete saw; Cribber and/or shoring; Cut granite curb setter; Dri-pak-it machine; Faller, logloader and buckler; Form raiser, slip forms; Green cutter; Headerboard, Hubsetter, aligner, by any method; High pressure blow pipe (1-1/2" or over, 100 lbs. pressure/over); Hydro seeder and similar type; Jackhammer operator; Jacking of pipe over 12 inches; Jackson and similar type compactor; Kettle tender, pot and worker applying asphalt, lay-kold, creosote, lime, caustic and similar type materials (applying means applying, dipping or handling of such materials); Lagging, sheeting, whaling, bracing, trenchjacking, lagging hammer; Magnesite, epoxyresin, fiberglass, mastic worker (wet or dry); No joint pipe and stripping of same, including repair of voids; Pavement breaker and spader, including tool grinder; Perma curb; Pipelayer (including grade checking in connection with pipelaying); Precast-manhole setter; Pressure pipe tester; Post hole digger, air, gas and electric; Power broom sweeper; Power tampers of all types

(except as shown in Group 2); Ram set gun and stud gun; Riprap stonepaver and rock-slinger, including placing of sacked concrete and/or sand (wet or dry) and gabions and similar type; Rotary scarifier or multiple head concrete chipping scarifier; Roto and Ditch Witch; Rototiller; Sandblaster, pot, gun, nozzle operators; Signalling and rigging; Tank cleaner; Tree climber; Turbo blaster; Vibrascreed, bull float in connection with laborers' work; Vibrator; Hazardous waste worker (lead removal); Asbestos and mold removal worker

GROUP 1-a: Joy drill model TWM-2A; Gardner-Denver model DH143 and similar type drills; Track driller; Jack leg driller; Wagon driller; Mechanical drillers, all types regardless of type or method of power; Mechanical pipe layers, all types regardless of type or method of power; Blaster and powder; All work of loading, placing and blasting of all powder and explosives of whatever type regardless of method used for such loading and placing; High scalers (including drilling of same); Tree topper; Bit grinder

GROUP 1-b: Sewer cleaners shall receive \$4.00 per day above Group 1 wage rates. "Sewer cleaner" means any worker who handles or comes in contact with raw sewage in small diameter sewers. Those who work inside recently active, large diameter sewers, and all recently active sewer manholes shall receive \$5.00 per day above Group 1 wage rates.

GROUP 1-c: Burning and welding in connection with laborers' work; Synthetic thermoplastics and similar type welding

GROUP 1-d: Maintenance and repair track and road beds. All employees performing work covered herein shall receive \$.25 per hour above their regular rate for all work performed on underground structures not specifically covered herein. This paragraph shall not be construed to apply to work below ground level in open cut. It shall apply to cut and cover work of subway construction after the temporary cover has been placed.

GROUP 1-e: Work on and/or in bell hole footings and shafts thereof, and work on and in deep footings. (A deep footing is a hole 15 feet or more in depth.) In the event the depth of the footing is unknown at the commencement of excavation, and the final depth exceeds 15 feet, the deep footing wage rate would apply to all employees for each and every day worked on or in the excavation of the footing from the date of inception.

GROUP 1-f: Wire winding machine in connection with guniting or shot crete

GROUP 1-g, CONTRA COSTA COUNTY: Pipelayer (including grade checking in connection with pipelaying); Caulker; Bander; Pipewrapper; Conduit layer; Plastic pipe layer; Pressure pipe tester; No joint pipe and stripping of same, including repair of voids; Precast manhole setters, cast in place manhole form setters

GROUP 2: Asphalt shoveler; Cement dumper and handling dry cement or gypsum; Choke-setter and rigger (clearing work); Concrete bucket dumper and chute; Concrete chipping and grinding; Concrete laborer (wet or dry); Driller tender, chuck tender, nipper; Guinea chaser (stake), grout crew; High pressure nozzle, adductor; Hydraulic monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete

construction; Pittsburgh chipper and similar type brush shredders; Sloper; Single foot, hand-held, pneumatic tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1-f; Jacking of pipe - under 12 inches

GROUP 3: Construction laborers, including bridge and general laborer; Dump, load spotter; Flag person; Fire watcher; Fence erector; Guardrail erector; Gardener, horticultural and landscape laborer; Jetting; Limber, brush loader and piler; Pavement marker (button setter); Maintenance, repair track and road beds; Streetcar and railroad construction track laborer; Temporary air and water lines, Victaulic or similar; Tool room attendant (jobsite only)

GROUP 4: Final clean-up work of debris, grounds and building including but not limited to: street cleaner; cleaning and washing windows; brick cleaner (jobsite only); material cleaner (jobsite only). The classification "material cleaner" is to be utilized under the following conditions:

A: at demolition site for the salvage of the material.

B: at the conclusion of a job where the material is to be salvaged and stocked to be reused on another job.

C: for the cleaning of salvage material at the jobsite or temporary jobsite yard.

The material cleaner classification should not be used in the performance of "form stripping, cleaning and oiling and moving to the next point of erection".

GUNITE LABORER CLASSIFICATIONS

GROUP 1: Structural Nozzleman

GROUP 2: Nozzleman, Gunman, Potman, Groundman

GROUP 3: Reboundman

GROUP 4: Guniting laborer

WRECKING WORK LABORER CLASSIFICATIONS

GROUP 1: Skilled wrecker (removing and salvaging of sash, windows and materials)

GROUP 2: Semi-skilled wrecker (salvaging of other building materials)

LABO0067-010 06/29/2009

Rates Fringes

Tunnel and Shaft Laborers:

GROUP 1.....\$ 33.35 14.93

GROUP 2.....\$ 33.12 14.93

GROUP 3.....\$ 32.87 14.93

GROUP 4.....\$ 32.42 14.93

GROUP 5.....\$ 31.88 14.93

Shotcrete Specialist.....\$ 33.87 14.93

TUNNEL AND SHAFT CLASSIFICATIONS

GROUP 1: Diamond driller; Groundmen; Guniting and shotcrete nozzlemen

GROUP 2: Rodmen; Shaft work & raise (below actual or excavated ground level)

GROUP 3: Bit grinder; Blaster, driller, powdermen, heading; Cherry pickermen - where car is lifted; Concrete finisher in tunnel; Concrete screedman; Grout pumpman and potman; Guniting & shotcrete gunman & potman; Headermen; High pressure nozzleman; Miner - tunnel, including top and bottom man on shaft and raise work; Nipper; Nozzleman on slick line; Sandblaster - potman, Robotic Shotcrete Placer,

Segment Erector, Tunnel Muck Hauler, Steel Form raiser and setter; Timberman, retimberman (wood or steel or substitute materials therefore); Tugger (for tunnel laborer work); Cable tender; Chuck tender; Powderman - primer house
GROUP 4: Vibrator operator, pavement breaker; Bull gang - muckers, trackmen; Concrete crew - includes rodding and spreading, Dumpmen (any method)
GROUP 5: Grout crew; Reboundman; Swamper/ Brakeman

LABO0073-003 07/01/2009
CALAVERAS, MARIPOSA, MERCED, MONTEREY, SAN BENITO, SAN JOAQUIN, STANISLAUS AND TUOLUMNE COUNTIES:
Rates Fringes
LABORER
Mason Tender-Brick.....\$ 27.03 14.93

LABO0073-005 07/01/2009
CALAVERAS, FRESNO, KINGS, MADERA, MARIPOSA, MERCED, SAN JOAQUIN, STANISLAUS & TUOLUMNE
Rates Fringes
Plasterer tender.....\$ 28.37 14.14

LABO0166-001 07/01/2006
ALAMEDA AND CONTRA COSTA COUNTIES:
Rates Fringes
Brick Tender.....\$ 25.91 14.65
FOOTNOTES: Work on jobs where heat-protective clothing is required: \$2.00 per hour additional. Work at grinders: \$.25 per hour additional. Manhole work: \$2.00 per day additional.

LABO0166-002 07/01/2006
ALAMEDA AND CONTRA COSTA COUNTIES:
Rates Fringes
Plasterer tender.....\$ 30.15 15.90
Gun Man \$0.75 per hour additional

LABO0270-001 07/01/2008
SANTA CLARA & SANTA CRUZ COUNTIES
Rates Fringes
MASON TENDER, BRICK
Santa Clara.....\$ 27.93 13.48
Santa Cruz.....\$ 26.93 13.48
FOOTNOTE: \$2.00 per hour for refractory work where heat-protective clothing is required.

LABO0270-005 07/01/2007
SANTA CLARA AND SANTA CRUZ COUNTIES
Rates Fringes
PLASTER TENDER
4 Stories and under.....\$ 27.62 13.73
5 Stories and above.....\$ 29.54 13.73

LABO0294-001 07/01/2009
FRESNO, KINGS AND MADERA COUNTIES
Rates Fringes
LABORER (Brick)
Mason Tender-Brick.....\$ 27.03 14.93

LABO0297-001 08/01/2007
MONTEREY AND SAN BENITO COUNTIES

Rates Fringes

Plasterer tender.....\$ 23.70 11.50
FOOTNOTE: Mixer person: \$4.00 per day additional.

PAIN0016-001 07/01/2009

ALAMEDA, CONTRA COSTA, MONTEREY, SAN BENITO, SAN MATEO, SANTA CLARA, AND SANTA CRUZ COUNTIES

Rates Fringes

Painters:.....\$ 34.00 15.87

PREMIUMS:

EXOTIC MATERIALS - \$0.75 additional per hour.

SPRAY WORK: - \$0.50 additional per hour.

INDUSTRIAL PAINTING - \$0.25 additional per hour

[Work on industrial buildings used for the manufacture and processing of goods for sale or service; steel construction (bridges), stacks, towers, tanks, and similar structures]

HIGH WORK:

over 50 feet - \$2.00 per hour additional

100 to 180 feet - \$4.00 per hour additional

Over 180 feet - \$6.00 per hour additional

PAIN0016-003 01/01/2010

AREA 1: ALAMEDA, CONTRA COSTA, SAN FRANCISCO, SAN MATEO & SANTA CLARA COUNTIES

AREA 2: CALAVERAS, MARIPOSA, MERCED, MONTEREY, SAN BENITO, SAN JOAQUIN, SANTA CRUZ, STANISLAUS & TUOLUMNE COUNTIES

Rates Fringes

Drywall Finisher/Taper

AREA 1.....\$ 40.66 16.18

AREA 2.....\$ 36.53 14.78

PAIN0016-012 01/01/2010

ALAMEDA, CONTRA COSTA, MARIPOSA, MERCED, MONTEREY, SAN BENITO, SAN FRANCISCO, SAN MATEO, SANTA CLARA AND SANTA CRUZ COUNTIES

Rates Fringes

SOFT FLOOR LAYER.....\$ 43.66 14.82

PAIN0016-015 01/01/2010

CALAVERAS, MARIPOSA, MERCED, SAN JOAQUIN, STANISLAUS & TUOLUMNE COUNTIES

Rates Fringes

PAINTER

Brush.....\$ 29.82 12.72

FOOTNOTES:

SPRAY/SANDBLAST: \$0.50 additional per hour.

EXOTIC MATERIALS: \$1.00 additional per hour.

HIGH TIME: Over 50 ft above ground or water level \$2.00

additional per hour. 100 to 180 ft above ground or water

level \$4.00 additional per hour. Over 180 ft above ground

or water level \$6.00 additional per hour.

PAIN0016-022 07/01/2009

SAN FRANCISCO COUNTY

Rates Fringes

PAINTER.....\$ 37.62 15.87

PAIN0169-001 01/01/2010

FRESNO, KINGS, MADERA, MARIPOSA AND MERCED COUNTIES:

Rates Fringes

GLAZIER.....\$ 31.18 14.15

PAIN0169-005 01/01/2010
ALAMEDA CONTRA COSTA, MONTEREY, SAN BENITO, SAN FRANCISCO, SAN
MATEO, SANTA CLARA & SANTA CRUZ COUNTIES
Rates Fringes
GLAZIER.....\$ 41.51 17.66

PAIN0294-004 01/01/2010
FRESNO, KINGS AND MADERA COUNTIES
Rates Fringes
PAINTER
Brush, Roller.....\$ 26.46 12.03
Drywall Finisher/Taper.....\$ 30.51 12.53

FOOTNOTE:
Spray Painters & Paperhangers recive \$1.00 additional per
hour. Painters doing Drywall Patching receive \$1.25
additional per hour. Lead Abaters & Sandblasters receive
\$1.50 additional per hour. High Time - over 30 feet (does
not include work from a lift) \$0.75 per hour additional.

PAIN0294-005 01/01/2010
FRESNO, KINGS & MADERA
Rates Fringes
SOFT FLOOR LAYER.....\$ 30.12 11.40

PAIN0767-001 07/01/2009
CALAVERAS, SAN JOAQUIN, STANISLAUS AND TUOLUMNE COUNTIES:
Rates Fringes
GLAZIER.....\$ 33.53 16.20
PAID HOLIDAYS: New Year's Day, Martin Luther King, Jr. Day,
President's Day, Memorial Day, Independence Day, Labor Day,
Veteran's Day, Thanksgiving Day, and Christmas Day.
Employee rquired to wear a body harness shall receive \$1.50
per hour above the basic hourly rate at any elevation.

PAIN1176-001 07/01/2009
HIGHWAY IMPROVEMENT
Rates Fringes
Parking Lot Striping/Highway
Marking:
GROUP 1.....\$ 29.44 12.51
GROUP 2.....\$ 24.23 12.51
GROUP 3.....\$ 24.86 12.51
CLASSIFICATIONS
GROUP 1: Striper: Layout and application of painted traffic
stripes and marking; hot thermo plastic; tape, traffic
stripes and markings
GROUP 2: Gamecourt & Playground Installer
GROUP 3: Protective Coating, Pavement Sealing

PAIN1237-003 01/01/2010
CALAVERAS; SAN JOAQUIN COUNTIES; STANISLAUS AND TUOLUMNE
COUNTIES:
Rates Fringes
SOFT FLOOR LAYER.....\$ 30.54 13.39

PLAS0066-002 07/01/2009
ALAMEDA, CONTRA COSTA, SAN MATEO AND SAN FRANCISCO COUNTIES:
Rates Fringes
PLASTERER.....\$ 34.13 21.15

PLAS0300-001 07/01/2009
 Rates Fringes
 PLASTERER
 AREA 188: Fresno.....\$ 29.72 14.21
 AREA 224: San Benito,
 Santa Clara, Santa Cruz.....\$ 34.22 14.08
 AREA 295: Calaveras & San
 Joaquin Counties.....\$ 32.82 15.10
 AREA 337: Monterey County..\$ 31.01 13.93
 AREA 429: Mariposa,
 Merced, Stanislaus,
 Tuolumne Counties.....\$ 32.82 15.30

PLAS0300-005 07/01/2006
 Rates Fringes
 CEMENT MASON/CONCRETE FINISHER...\$ 25.88 15.03

PLUM0038-001 07/01/2009
 SAN FRANCISCO COUNTY
 Rates Fringes
 PLUMBER (Plumber,
 Steamfitter, Refrigeration
 Fitter).....\$ 47.11 34.39

PLUM0038-005 07/01/2009
 SAN FRANCISCO COUNTY
 Rates Fringes
 Landscape/Irrigation Fitter
 (Underground/Utility Fitter).....\$ 40.03 28.43

PLUM0062-001 01/01/2010
 MONTEREY AND SANTA CRUZ COUNTIES
 Rates Fringes
 PLUMBER & STEAMFITTER.....\$ 40.20 19.28

* PLUM0159-001 07/01/2010
 CONTRA COSTA COUNTY
 Rates Fringes
 Plumber and steamfitter
 (1) Refrigeration.....\$ 52.23 22.49
 (2) All other work.....\$ 53.12 22.49

PLUM0246-001 01/01/2010
 FRESNO, KINGS & MADERA COUNTIES
 Rates Fringes
 PLUMBER & STEAMFITTER.....\$ 35.45 19.68

PLUM0246-004 07/01/2006
 FRESNO, MERCED & SAN JOAQUIN COUNIES
 Rates Fringes
 PLUMBER (PIPE TRADESMAN).....\$ 13.00 7.30
 PIPE TRADESMAN SCOPE OF WORK:
 Installation of corrugated metal piping for drainage, as well
 as installation of corrugated metal piping for culverts in
 connection with storm sewers and drains; Grouting, dry
 packing and diapering of joints, holes or chases including
 paving over joints, in piping; Temporary piping for dirt
 work for building site preparation; Operating jack hammers,
 pavement breakers, chipping guns, concrete saws and spades

to cut holes, chases and channels for piping systems; Digging, grading, backfilling and ground preparation for all types of pipe to all points of the jobsite; Ground preparation including ground leveling, layout and planting of shrubbery, trees and ground cover, including watering, mowing, edging, pruning and fertilizing, the breaking of concrete, digging, backfilling and tamping for the preparation and completion of all work in connection with lawn sprinkler and landscaping; Loading, unloading and distributing materials at jobsite; Putting away materials in storage bins in jobsite secure storage area; Demolition of piping and fixtures for remodeling and additions; Setting up and tearing down work benches, ladders and job shacks; Clean-up and sweeping of jobsite; Pipe wrapping and waterproofing where tar or similar material is applied for protection of buried piping; Flagman

PLUM0342-001 07/01/2009
 ALAMEDA & CONTRA COSTA COUNTIES
 Rates Fringes
 PIPEFITTER
 CONTRA COSTA COUNTY.....\$ 47.46 27.14
 PLUMBER, PIPEFITTER,
 STEAMFITTER
 ALAMEDA COUNTY.....\$ 47.46 27.14

* PLUM0355-004 07/01/2010
 ALAMEDA, CALAVERAS, CONTRA COSTA, FRESNO, KINGS, MADERA, MARIPOSA, MERCED, MONTEREY, SAN BENITO, SAN JOAQUIN, SAN MATEO, SANTA CLARA, SANTA CRUZ, STANISLAUS, AND TUOLUMNE COUNTIES:
 Rates Fringes
 Underground Utility Worker
 /Landscape Fitter.....\$ 28.10 7.20

PLUM0393-001 07/01/2009
 SAN BENITO AND SANTA CLARA COUNTIES
 Rates Fringes
 PLUMBER/PIPEFITTER.....\$ 50.66 23.83

PLUM0442-001 01/01/2010
 CALAVERAS, MARIPOSA, MERCED, SAN JOAQUIN, STANISLAUS & TUOLUMNE COUNTIES
 Rates Fringes
 PLUMBER & STEAMFITTER.....\$ 35.70 19.78

* PLUM0467-001 07/01/2010
 SAN MATEO COUNTY
 Rates Fringes
 Plumber/Pipefitter/Steamfitter...\$ 51.75 24.26

ROOF0027-002 01/01/2010
 FRESNO, KINGS, AND MADERA COUNTIES
 Rates Fringes
 ROOFER.....\$ 27.65 8.05
 FOOTNOTE: Work with pitch, pitch base of pitch impregnated products or any material containing coal tar pitch, on any building old or new, where both asphalt and pitchers are used in the application of a built-up roof or tear off: \$2.00 per hour additional.

ROOF0040-002 09/01/2009
SAN FRANCISCO & SAN MATEO COUNTIES:
Rates Fringes
ROOFER.....\$ 33.33 10.39

ROOF0081-001 08/01/2009
ALAMEDA AND CONTRA COSTA COUNTIES:
Rates Fringes
Roofer.....\$ 30.95 12.65

ROOF0081-004 08/01/2009
CALAVERAS, MARIPOSA, MERCED, SAN JOAQUIN, STANISLAUS AND
TUOLUMNE COUNTIES:
Rates Fringes
ROOFER.....\$ 24.56 12.60

ROOF0095-002 08/01/2006
MONTEREY, SAN BENITO, SANTA CLARA, AND SANTA CRUZ COUNTIES:
Rates Fringes
ROOFER
Journeyman.....\$ 31.73 9.89
Kettleman (2 kettles),
Bitumastic Enameler, Coal
Tar, Pitch & Mastic.....\$ 33.73 9.89

SFCA0483-001 01/01/2010
ALAMEDA, CONTRA COSTA, SAN FRANCISCO, SAN MATEO AND SANTA CLARA
COUNTIES:
Rates Fringes
SPRINKLER FITTER (FIRE).....\$ 48.59 20.55

SFCA0669-011 01/01/2009
CALAVERAS, FRESNO, KINGS, MADERA, MARIPOSA, MERCED, MONTEREY,
SAN BENITO, SAN JOAQUIN, SANTA CRUZ, STANISLAUS AND TUOLUMNE
COUNTIES:
Rates Fringes
SPRINKLER FITTER.....\$ 32.15 16.05

SH EE0104-001 07/01/2009
AREA 1: ALAMEDA, CONTRA COSTA, SAN FRANCISCO, SAN MATEO, SANTA
CLARA
AREA 2: MONTEREY & SAN BENITO
AREA 3: SANTA CRUZ
Rates Fringes
SHEET METAL WORKER
AREA 1:
Mechanical Contracts
under \$200,000.....\$ 43.32 26.40
All Other Work.....\$ 47.73 26.67
AREA 2.....\$ 37.32 3%+22.45
AREA 3.....\$ 39.25 22.26

SH EE0104-015 07/01/2009
ALAMEDA, CONTRA COSTA, MONTEREY, SAN BENITO, SAN FRANCISCO, SAN
MATEO, SANTA CLARA AND SANTA CRUZ COUNTIES:
Rates Fringes
SHEETMETAL WORKER (Metal
Decking and Siding only).....\$ 33.43 24.31

SH EE0162-001 01/01/2010

CALAVERAS AND SAN JOAQUIN COUNTIES:

Rates Fringes

SHEET METAL WORKER.....\$ 31.81 19.68

SHHEE0162-003 07/01/2009

MARIPOSA, MERCED, STANISLAUS AND TUOLUMNE COUNTIES:

Rates Fringes

SHEET METAL WORKER (Excluding metal deck and siding).....\$ 33.19 21.32

SHHEE0162-004 07/01/2009

FRESNO, KINGS, AND MADERA COUNTIES:

Rates Fringes

SHEET METAL WORKER.....\$ 33.18 22.47

SHHEE0162-013 07/01/2009

CALAVERAS, FRESNO, KINGS, MADERA, MARIPOSA, MERCED, SAN JOAQUIN, STANISLAUS AND TUOLUMNE COUNTIES:

Rates Fringes

Sheet metal worker (Metal decking and siding only).....\$ 33.19 21.32

TEAM0094-001 07/01/2009

Rates Fringes

Truck drivers:

GROUP 1.....\$ 27.13 18.99

GROUP 2.....\$ 27.43 18.99

GROUP 3.....\$ 27.73 18.99

GROUP 4.....\$ 28.08 18.99

GROUP 5.....\$ 28.43 18.99

FOOTNOTES:

Articulated dump truck; Bulk cement spreader (with or without auger); Dumpcrete truck; Skid truck (debris box); Dry pre-batch concrete mix trucks; Dumpster or similar type; Slurry truck: Use dump truck yardage rate.

Heater planer; Asphalt burner; Scarifier burner; Industrial lift truck (mechanical tailgate); Utility and clean-up truck: Use appropriate rate for the power unit or the equipment utilized.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Dump trucks, under 6 yds.; Single unit flat rack (2-axle unit); Nipper truck (when flat rack truck is used appropriate flat rack shall apply); Concrete pump truck (when flat rack truck is used appropriate flat rack shall apply); Concrete pump machine; Fork lift and lift jitneys; Fuel and/or grease truck driver or fuel person; Snow buggy; Steam cleaning; Bus or personhaul driver; Escort or pilot car driver; Pickup truck; Teamster oiler/greaser and/or serviceperson; Hook tender (including loading and unloading); Team driver; Tool room attendant (refineries)

GROUP 2: Dump trucks, 6 yds. and under 8 yds.; Transit mixers, through 10 yds.; Water trucks, under 7,000 gals.; Jetting trucks, under 7,000 gals.; Single-unit flat rack (3-axle unit); Highbed heavy duty transport; Scissor truck; Rubber-tired muck car (not self-loaded); Rubber-tired truck jumbo; Winch truck and "A" frame drivers; Combination winch truck with hoist; Road oil truck or bootperson; Buggymobile; Ross, Hyster and similar straddle carriers; Small rubber-tired tractor

GROUP 3: Dump trucks, 8 yds. and including 24 yds.; Transit

mixers, over 10 yds.; Water trucks, 7,000 gals. and over; Jetting trucks, 7,000 gals. and over; Vacuum trucks under 7500 gals. Trucks towing tilt bed or flat bed pull trailers; Lowbed heavy duty transport; Heavy duty transport tiller person; Self-propelled street sweeper with self-contained refuse bin; Boom truck - hydro-lift or Swedish type extension or retracting crane; P.B. or similar type self-loading truck; Tire repairperson; Combination bootperson and road oiler; Dry distribution truck (A bootperson when employed on such equipment, shall receive the rate specified for the classification of road oil trucks or bootperson); Ammonia nitrate distributor, driver and mixer; Snow Go and/or plow

GROUP 4: Dump trucks, over 25 yds. and under 65 yds.; Water pulls - DW 10's, 20's, 21's and other similar equipment when pulling Aqua/pak or water tank trailers; Helicopter pilots (when transporting men and materials); Lowbed Heavy Duty Transport up to including 7 axles; DW10's, 20's, 21's and other similar Cat type, Terra Cobra, LeTourneau Pulls, Tournorocker, Euclid and similar type equipment when pulling fuel and/or grease tank trailers or other miscellaneous trailers; Vacuum Trucks 7500 gals and over and truck repairman

GROUP 5: Dump trucks, 65 yds. and over; Holland hauler; Low bed Heavy Duty Transport over 7 axles

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
 - * a survey underlying a wage determination
 - * a Wage and Hour Division letter setting forth a position on a wage determination matter
 - * a conformance (additional classification and rate) ruling
- On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:
Branch of Construction Wage Determinations
Wage and Hour Division

U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

ATTACHMENT 4 TO APPENDIX 20

DEBARMENT AND SUSPENSION CERTIFICATION

1. By signing and submitting its proposal or bid, and by executing the Agreement or Contract, Developer and each Contractor (at all tiers) shall be deemed to have signed and delivered the following certification:

The undersigned certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a 3-year period preceding this proposal or bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
- d. Have not within a 3-year period preceding this proposal or bid had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective Developer or Contractor is unable to certify to any of the statements in this certification, such Person shall attach a certification to its proposal or bid, or shall submit it with the executed Agreement or Contract, stating that it is unable to provide the certification and explaining the reasons for such inability.

ATTACHMENT 5 TO APPENDIX 20

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

By signing and submitting its proposal or bid, and by executing the Concession or Contract, Developer and each Contractor (at all tiers) shall be deemed to have signed and delivered the following:

1. The Developer/Contractor certifies, to the best of its knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of **ANY** Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with **THIS** Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Contract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. Developer/Contractor shall require that the language of this certification be included in all lower tier Contracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

NOTE: DEVELOPER AND EACH CONTRACTOR IS REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN CONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH CONTRACTOR BEING PAID \$100,000 OR MORE.

ATTACHMENT 6 TO APPENDIX 20

COMPLIANCE WITH BUY AMERICA REQUIREMENTS

Developer shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in this Agreement only if domestic steel and iron will be used on the Facility. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the contract price under the Contract with the Lead Contractor.

Concurrently with execution of the Agreement, Developer has completed and submitted, or shall complete and submit, to the Department a Buy America Certificate, in format below. After submittal, Developer is bound by its original certification. However, in accordance with 49 USC 5323(j)(7), Developer may have the opportunity to correct an inadvertent error in its certification. Developer may correct any certification of noncompliance or failure to properly complete this certification if Developer attests under penalty of perjury that it submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing such inadvertent or clerical error is on Developer. Developer's failure to sign the certification is not considered an inadvertent or clerical error.

A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Agreement be investigated, Developer has the burden of proof to establish that it is in compliance.

At Developer's request, the Department may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Developer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Department. A request for a waiver shall be treated as a Change Proposal under Section 10.2 of the Agreement.

BUY AMERICA CERTIFICATE

Certificate of Compliance

Developer hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2), and the applicable regulations in 23 CFR 635.410.

Date: _____

Signature: _____

Developer's Name: _____

Title: _____

Or

Certificate for Noncompliance

Developer hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2), but may qualify for a waiver to the requirement to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and regulations in 23 CFR 635.410.

Date: _____

Signature: _____

Developer's Name: _____

Title: _____

APPENDIX 21

EXISTING GOVERNMENTAL APPROVALS; LIST OF MAJOR PERMITS]

Table 1 - Government Approvals Already Obtained by the Department and Approval Dates

Governmental Approval	Issuing Agency	Issuance/Approval Date
USACE Section 404 Nationwide Permit	U.S. Army Corp of Engineers	Approved May 14, 2009
RWQCB Section 401 Permit	California Regional Water Quality Control Board	Approved June 3, 2009
BCDC Consistency Determination	San Francisco Bay Conservation and Development Commission	Issued June 12, 2009
Programmatic Agreement	Agreement among FHWA, the Department, SFCTA, the Presidio Trust, Department of Veteran Affairs, California State Historic Preservation Officer, Advisory Council of Historic Preservation, and the San Francisco Recreation and Parks Department	Signed September 2008
Presidio Trust Right of Entry Agreement	Presidio Trust	Signed July 17, 2009
Record of Decision	FHWA	Issued December 17, 2008
SFCTA Board Resolution No. 09-29	SFCTA	Issued December 16, 2008

Table 2 – Major Permits and Major Permit Deadlines

Governmental Approval	Issuing Agency	Major Permit Deadline
Section 7 of the Endangered Species Act – Biological Opinion and incidental take permit (if needed)	U.S. Fish and Wildlife Service/ National Marine Fisheries Service	6 months after the start of formal consultation
Approvals of design submissions and other matters requiring approval under permit to enter or other right of access to GGBHTD property within the boundaries of Appendix 5	Golden Gate Bridge, Highway and Transportation District	50 days from submission of a complete application and supporting documentation in accordance with the terms of the permit to enter or other right of access and the requirements of GGBHTD
Presidio Trust approval of design submissions	Presidio Trust	50 days from submission of a complete application in accordance with the Contract Documents

APPENDIX 22

BASELINE REPORT AND SURVEY OF EXISTING CONDITIONS

1.0 General

The Department will prepare a Baseline Report and Survey of Existing Conditions for the Project.

The Baseline Report is intended to evaluate the physical condition of the Phase I Construction as of the date of the Baseline Report. The Baseline Report will identify incomplete work and apparent deficiencies in the Phase I Construction. The Baseline Report shall be used as provided in Section 4.16 of the Agreement.

The Survey of Existing Conditions is intended to capture the physical characteristics and condition prior to the date of such survey of properties and facilities provided to Developer for temporary use during Phase II Construction, as well as the cultural built environment and landscape within or near the Temporary Construction Easement (TCE). The Survey of Existing Conditions will ascertain and identify the condition of the properties, facilities and landscaping within or near the TCE listed in Sections 3.1, 3.2 and 3.3 below. The Survey of Existing Conditions shall be used to determine any damage from Developer's activity during Phase II Construction.

The Baseline Report and Survey of Existing Conditions will include any defects and existing damages such as cracks, settlement, leakage, distress and other deficiencies, which may have occurred prior to the date of such report and survey.

The Baseline Report and Survey of Existing Conditions may be based on elevation surveys, three dimensional (3-D) laser scans, crack surveys inside and outside buildings, structures, and other properties, video and photo surveys, reports of observations made by qualified personnel, and other non-intrusive surveying and reporting methods as appropriate.

This Appendix sets forth the procedure for developing, and the minimum required components addressed in, the Baseline Report and Survey of Existing Conditions.

2.0 Baseline Report

2.1 Scope of Baseline Report

The Baseline Report shall establish the baseline conditions and characteristics as of the date of such report for the following components of the Phase I Construction:

- Roadway assets, including all safety elements such as barriers and attenuators
- Structures
- Culverts and drainage structures and systems
- Earthwork
- Tunnel Systems, including fire suppression, ventilation, electrical, monitoring, and communication systems
- Intelligent Transportation Systems

- Traffic monitoring systems, including the TOMC
- Electrical systems and communication systems
- Railing
- Fencing
- Lighting
- Sign and sign structures
- Signals

The demolition works that are part of Phase 1 Construction are excluded from the Baseline Report.

2.2 Access to Inspect

Upon NTP 2, the Department will provide necessary access for Developer to conduct non-intrusive inspections and surveys as necessary to verify the Baseline Report developed by the Department after the Phase 1 Punch List has been delivered to Developer.

3.0 Survey of Existing Conditions

The Survey of Existing Conditions will document the condition of the facilities made available to Developer for temporary use during Phase II Construction as set forth in Section 3.1 below, as well as the foundations, walls, ceilings, roofs, doors, windows, chimneys and other building elements on the interiors and exteriors of the facilities listed in Section 3.2 below and the cultural landscape per Section 3.3 below.

3.1 Facilities for Temporary Use During Phase II Construction

The Survey of Existing Conditions shall establish the baseline condition and characteristics as of the date of such survey of the lands, grounds, facilities, properties and landscape within the TCE, as well as Haul Routes made available to Developer for temporary use during Phase II Construction.

3.2 Built Environment

The Survey of Existing Conditions shall establish the baseline conditions of the buildings, structures, facilities, and other properties within 200 feet of the TCE as well as other cultural resources as designated by the Department, including the following properties:

- 108 Electric Shop
- 123 Garage
- 105 barrack
- 106 band
- 1063 med supply
- 107 Switching Station
- 108 Electric Shop
- 1151 Pool
- 1152 Gym
- 1160 warehouse
- 1161 warehouse
- 1162 warehouse

- 1163 warehouse
- 1167 warehouse
- 1169 warehouse
- 1170 warehouse
- 1170 warehouse
- 1182 warehouse
- 1183 warehouse
- 1184 warehouse
- 1185 warehouse
- 1186 warehouse
- 1187 warehouse
- 1188 warehouse
- 122 gymnasium
- 123 Garage
- 1263 enlisted family housing
- 1266 enlisted family housing
- 1270 enlisted family housing
- 128 enlisted family housing
- 1289 enlisted family housing
- 129 enlisted family housing
- 1290 enlisted family housing
- 1291 enlisted family housing
- 1293 enlisted family housing
- 150 VAC chapel
- 151 VAC house
- 152 VAC restroom
- 153 VAC garage
- 154 VAC maint. Garage
- 201 exchange
- 204 exchange
- 210 Guard House
- 222 Warehouse
- 223 Warehouse
- 227 Warehouse
- 228 bakery
- 229 bakery
- 603 commissary
- 631 ammunition magazine
- 632 ammunition magazine
- 635 Battery Blaney
- 636 Battery Sherwood
- 649 Army reserve center
- 650 Stilwell Hall
- 651 Administration
- 652 transformer vault
- 654 guard house
- 661 stable
- 662 stable
- 667 stable
- 669 Incinerator

- 681 barracks
- 682 en. barracks and mess
- 683 barracks
- 966 Radio
- 967 Film Vault
- Battery Slaughter
- Palace of Fine Arts
- VA Cemetery to first road

Additional properties may need to be included in the Survey of Existing Conditions depending upon Developer's Final Design and chosen construction means and methods.

Developer shall not disturb the cultural resources, except for certain buildings as outlined in the Contract Documents.

3.3 Cultural Landscape

The Survey of Existing Conditions shall establish the baseline conditions of landscaping and vegetation within 200 feet of the TCE.

APPENDIX 23

LIST OF THIRD PARTY AGREEMENTS

Programmatic Agreement, including Built Environment Treatment Plan and Archaeology Treatment Plan

Presidio Trust Right of Entry Agreement

License to Enter Agreement