

SPECIAL PROVISIONS ADDENDUM NO. 3, 4, 5, 6, 7

SP-1 AWARD OF CONTRACT/BASE BID AND OPTIONAL ITEMS ADD. 6

- A. The Contract, if awarded, will be awarded to the responsible Bidder that submits the lowest responsive Bid based on the lowest Total Base Bid Price.
- B. Base Bid and Optional Bid Items
 - 1. The Base Bid shall cover all work under the Contract, except for the work identified as Optional Bid Items
 - 2. Optional Bid Items (Additive) shall cover all costs of the Option work only and shall not include Base Bid work. Optional Bid Item prices shall include markups for overhead and profit.
 - 3. Optional Bid Items (Deductive) shall cover the deductive costs associated with the Optional work relative to the Base Bid.
 - 4. Bids must be balanced. The Contractor will not receive any additional compensation for work described under the Base Bid if the City elects to exercise any option.
 - 5. The City will decide, in its sole discretion, which options, if any, will be awarded or exercised.
 - 6. The Bidder further proposes and agrees that the City may exercise an Option at Notice to Proceed 1 (NTP 1), unless parties agree to a later date.
 - 7. If the City exercises an option, the Contract sum will be adjusted for the selected Optional Bid Items only.

ADD. 4

SP-2 WORKFORCE DEVELOPMENT PLAN

- A. Prior to performing any construction work on the Site Contractor shall submit to SFMTA for approval a Workforce Development Plan ("Plan"). The Plan shall describe how the Contractor (including all subcontractors) will comply with work force, pay, and employment requirements of the Contract, including, but not limited to:
 - 1. City's First Source Referral Program;
 - 2. Federal workforce goals for minorities and women;
 - 3. State Apprenticeship Program standards for the hiring and participation of apprentices;
 - 4. Prevailing Wage laws, regulations and reporting requirements;
 - 5. Federal, State and Local Equal Employment Opportunity requirements; and
 - 6. Equal Benefits requirements of the City's Non-Discrimination in Contracts Ordinance.

- B. Upon request by the City, Contractor shall submit documents and other proof demonstrating compliance with the approved Plan and related Contract requirements.

SP-3 NOTICE TO PROCEED

- A. Notice-to-Proceed (NTP) for Contract 1252 will be given in 3 steps:
 - 1. NTP 1: Procurement of two Tunnel Boring Machines (TBMs), equipment mobilization payment, design and procurement of precast concrete segment moulds, early construction submittal preparation, and obtaining required bonding and insurance, all as stipulated in Section 01 20 00-Price and Payment Procedures.
 - 2. NTP 2: Establishment of the portal work site, the construction of the TBM Launch Box and the associated ground modification, and preparatory activities for tunnel construction such as tunnel liner segment manufacture. NTP 2 may be issued concurrently with, but will not be issued later than 90 Days after NTP 1. ^{ADD. 7}
 - 3. NTP 3: Commence tunnel construction and complete remaining work under the contract. NTP 3 will be issued not less than 230 Days after NTP1 and no later than 410 Days after NTP 1.
- B. If the City delays issuing NTP 2 or NTP 3 beyond the time limits provided in the preceding paragraphs A.2 and A.3, and such delay is not due to the fault of Contractor, the City shall provide Contractor an extension of Contract Time for each Day of such delay.

SP-4 TIME ALLOWANCE FOR COMPLETION OF WORK

- A. Time is of the essence in the Contractor's performance and completion of all Work under this Contract. The Contractor shall especially avoid interference with and inconvenience to transit services, vehicular and pedestrian traffic, local businesses and residents, and the general public in the performance and completion of the Work under this Contract.
- B. The Contractor shall bring the Work to Substantial Completion within:
1150 calendar Days from NTP 1.
from and including the official date of commencement of the work as designated by the SFMTA in accordance with the General Provisions, "Notice of commencement of Work", also referred herein as Notice-to-Proceed (NTP) for the Base Bid Work.
- C. Substantial Completion shall be defined as the state in progress of the Work when the Work is complete in accordance with the Contract Plans and Specifications, tested and usable for the purposes for which it is intended, and when there will be no further interference or disruption to SFMTA transit operations, other City facilities, or the public. When SFMTA determines that all the Work is Substantially Completed, SFMTA shall establish the Substantial Completion date in accordance with Section 01 77 00 – Closeout Procedures.

- D. The Contractor shall complete all remaining Work within thirty (30) calendar days after Substantial Completion date at which time the Work will be considered to be at Final Completion.

**SP-5 LIQUIDATED DAMAGES
(SUPPLEMENTING GENERAL PROVISION SECTION 7.03)**

- A. Liquidated Damages General:
1. The provisions of this Section SP-5 supplement but do not replace General Provision Section 7.03. If the Work or the Project is delayed or if the Contractor otherwise fails to meet its obligation under the Agreement to perform the Work in a manner that will minimize interference with transit operations, traffic, and public/private access, the City will suffer damages. The actual fact of the occurrence of damages and the actual amount of the damages, which the City will suffer if the Work is not completed within the specified time periods set forth in this Contract, are dependent upon many circumstances and conditions, which could prevail in various combinations and would be impracticable and extremely difficult to fix the City's actual damages that might arise from Contractor's delay.
 2. Damages which the City would suffer in the event of Contractor's delay include, but are not limited to, expenses of prolonged employment of architectural, engineering, public outreach and construction management staff comprised of both City representatives and consultants; costs of administration, inspection, and supervision; and the loss of use suffered by the public by reasons of the delay in the construction of the Project.
 3. Contractor and City agree that the amount of liquidated damages set forth herein is not a penalty, but represents the parties' reasonable estimate of the approximate damages that the City will sustain for failure of the Contractor to complete the Work within the times specified, or to comply with other requirements of these Specifications.
- B. Liquidated Damages for Delay in Completion of the Work:
1. The Contractor shall pay the sum of Fifty Thousand Dollars (\$50,000) per Day for each and every calendar Day of delay in the substantial completion of all the Work under the Contract beyond the number of calendar days specified for the substantial completion of the Work, with the actual number of days counted from and including the official date for commencement of the Work, and continuing to the date at which the Engineer determines that the Work has reached Substantial Completion and the Contractor has been so notified in writing by the Engineer. ^{ADD. 6}
- C. Liquidated Damages for Delay in Completion of Cross Passages One through Four:
1. Contractor shall pay the sum of Fifty Thousand Dollars (\$50,000) per Day for each and every calendar Day of delay in the substantial completion of the construction of Cross Passages One through Four beyond the number of calendar days specified in the Contract Documents for the substantial completion of said Cross Passages, with the actual number of days counted from and including the official date for commencement of the

Work, and continuing to the date at which the Engineer determines that the Work has reached Substantial Completion and the Contractor has been so notified in writing by the Engineer. ^{ADD. 6}

2. Liquidated damages for Contractor's delay in completing the construction of Cross Passages One through Four shall not be assessed in addition to liquidated damages assessed for delay to completion of the Work under the preceding paragraph B, where the Days of delay to completion of the Work is concurrent with delay to completion of the Cross Passages.
- D. Liquidated Damages for Delay in Completion of Remaining Work:
1. Following Substantial Completion, the Contractor shall pay the sum of Ten Thousand Dollars (\$10,000) per day for each and every calendar day of delay in Final Completion of the Work beyond the number of calendar days specified herein.
- E. Liquidated Damages for Interference to Muni:
1. The Contractor shall pay the sum of Five Hundred Dollars (\$500) per vehicle per hour or fraction thereof for any delay or interruption of Muni operations.
- F. Liquidated Damages for Traffic Routing and Traffic Control Violations:
1. The Contractor shall pay the sum of Two Hundred Dollars (\$200) per day for each and every calendar day delay submitting the required Traffic Control Plans and schedule. No contracted Work shall commence in the field without approved Traffic Control Plans.
 2. The Contractor shall pay the sum of Two Thousand Dollars (\$2,000) as well as the penalty amounts of any San Francisco Police Department (SFPD) citation for each occasion that the Contractor performs Work on City streets without approved Traffic Control Plans.
 3. The Contractor shall pay the sum of Two Hundred Dollars (\$200) per incident for not providing notice as required by the Agreement of intersection traffic signal shutdown with detailed contact information. Where it is necessary to shutdown existing intersection traffic signals, the Contractor shall provide forty-eight (48) hour written notification to the Engineer, Traffic Engineer (fax no. 415-701-4737), Signal Shop (fax no. 415-550-2930), and SFPD Traffic Bureau to coordinate the shutdown and to control traffic by a police officer. The notification shall include contact name and 24-hour phone number to be used in case of an emergency.
 4. The Contractor shall pay the sum of Five Hundred Dollars (\$500) per hour, or portion thereof, per lane for failure to provide the lane requirements of Section 01 55 26 - Traffic Control, of the Technical Specifications.
 - a. In addition, if the Contractor's failure to provide the required traffic lanes causes traffic congestion requiring immediate action by the City to provide Parking Control Officers or Police Officers to control traffic manually, the Contractor shall reimburse the City its costs for a minimum of 2 hours and an additional one hour travel time per officer.
 5. The Contractor shall pay the sum of Five Hundred Dollars (\$500) per day for each and every calendar day for each solar operated Flashing Arrow

Sign and/or Changeable Message Sign not furnished and in place in accordance with Section 01 55 26 - Traffic Control, of the Technical Specifications.

6. The Contractor shall pay the sum of Two Hundred Dollars (\$200) per day for each and every calendar day for traffic sign, traffic device, and/or non-skid steel plate not furnished and in place in accordance with Section 01 55 26 - Traffic Control, of the Technical Specifications.
 7. The Contractor shall pay the sum of Five Hundred Dollars (\$500) per day per block or portion of a block for each and every calendar day when there is no continuous construction activity within 24 hours of the posted effective date and time of the temporary "Tow-Away, No Stopping" zone restricting parking.
 8. The Contractor shall pay the sum of One Thousand Dollars (\$1,000) per Day for each and every calendar Day for failure to furnish and install temporary pavement markings in accordance with Section 01 55 26 - Traffic Control, of the Technical Specifications.
- G. Liquidated Damages for Failing to Provide Accessible Path-of-Travel:
1. The Contractor shall pay the sum of One Thousand Dollars (\$1,000) per day for each and every calendar day of failing to provide an accessible path-of-travel meeting ADA requirements.
- H. Liquidated Damages for Environmental Permit and Environmental Regulation Violations:
1. The Contractor shall pay liquidated damages in the amount of One Thousand Dollars (\$1000) per Day for each violation of the Specifications, environmental mitigation measures, regulations and City Ordinances called for in Section 01 57 19, Environmental Mitigation Measures, and Section 01 57 23, Environmental Management of Excavated Materials as related to or concerning the control of dust and air borne particles, the control, removal, transport, and disposal of excavated materials, control of storm water, waste water, sediment, and noise. Contractor shall pay particular attention to: (a) the prevention of accumulation and prompt clean-up of spills of dirt, debris and other excavated materials onto streets, sidewalks, and roadways; (b) sediment control, the protection of catch basins, and prevention of soil and sediment from falling or washing into storm drains and sewers; (c) the prevention and control of dust created by the Work; (d) proper treatment and disposal of storm water and ground water prior to discharge; (e) adherence to noise restrictions; (f) adherence to equipment emissions requirements and restrictions. Said liquidated damages are in addition to any fine or other regulatory penalty assessed against the Contractor for the same event or occurrence of non-compliance or violation. Contractor agrees that said liquidated damages do not constitute a penalty, but are compensation to be paid the City for the nuisance to and harm incurred by the SFMTA and the public arising from Contractor's failure to abide by such environmental requirements and regulations, and that the amount of liquidated damages is a reasonable estimate of the actual value of said damages, which would otherwise be extremely difficult if not impossible to determine. Said liquidated damages

do not include the actual costs to the City of cleaning or repairing damage or otherwise mitigating the adverse impacts to the City, public and private property and infrastructure arising from or otherwise related to Contractor's violation of said environmental regulations or requirements.

ADD.6

- I. The Engineer shall furnish the Contractor with the weekly progress report showing the date, period of time of violation, and the assessed liquidated damages. If Contractor disagrees with the assessment liquidated damages or disagrees with the amounts assessed, Contractor shall file a written protest within fifteen (15) Days from the issuance of the weekly progress report. Such protest shall explain the basis for disputing the assessment of the liquidated damages, otherwise the decision of the Engineer shall be deemed to have been accepted by the Contractor as correct.
- J. The amount of liquidated damages shall be deducted from the progress and/or final payments to be made to Contractor.
- K. It is further agreed that except as expressly otherwise stated in the Contract, payment of liquidated damages under one of the aforementioned conditions will not relieve the Contractor from separate liquidated damage liability under the other conditions, each to the full extent of the specified amount, regardless of whether the times for which liquidated damages are to be paid do or do not run concurrently, or whether each liability is or is not a consequence of the other.
- L. Contractor's liability for liquidated damages to the City for delay in Substantial Completion of the Work, as provided in SP-5 section B, shall be limited to an amount equivalent to ten percent (10%) of the Contract Sum. Said liquidated damages shall be the SFMTA's sole monetary remedy to recompense the City for Contractor's delay to the Substantial Completion of the Work, but the City's assessment of such liquidated damages shall not delay or preclude the City from seeking any other remedy at law or in equity, including but not limited to termination of the Contract. At any time that the City determines that the Contractor is failing to perform the Work as required by the Contract Documents or that Contractor is not capable of completing the Work within such time as the overall schedule for the Central Subway Project may reasonably allow, following such period for cure as provided in the Contract or that is otherwise reasonably required under the circumstances, the SFMTA shall have the right to terminate the Contract, require the surety that issued the performance bond to assume control of the Work, and/or initiate action against Contractor for breach or specific performance of the Contract.^{ADD.7}

SP-6 SPECIAL INSTRUCTIONS TO THE CONTRACTOR

- A. Conditions of the Work and Site:
 - 1. The Work is located in and adjacent to major arterial streets with significant private residences and commercial business operations on both sides of the street. The alignment is along a major utility corridor as well as pedestrian and SFMTA transit routes. The TBM Launch Box/Portal is generally located along Fourth Street between Bryant Street and Harrison Street. The horizontal alignment of the tunnels travels from the TBM

Launch Box/Portal northwesterly along Fourth Street to Market Street. From this point it then angles in a northern direction along Stockton Street to approximately the intersection of Columbus Avenue and Stockton Streets. The alignment then angles back to a northwesterly direction along Columbus Avenue to its terminus at the TBM Retrieval Shaft near the intersection of Columbus Avenue and Union Street.

2. Work performed under this contract shall be performed in a manner that creates minimal impact or disturbance to the public, residents and commercial businesses adjacent to the work area, SFMTA transit operations, pedestrians, and vehicle traffic. Therefore, Night Time Work as allowed by City and County of San Francisco Codes and regulations is encouraged, and in some cases may be required in order to comply with access and/or schedule completion requirements in these Contract Documents. All cost impacts due to Night Time or weekend work are incidental to the work being performed, unless specifically negotiated as part of a change.
3. The Contractor's attention is directed to site conditions, coordination and permitting, included but not limited to the following, indicated on the Drawings and the applicable Specification Sections. This includes traffic controls, emergency vehicle access, ADA access, Project environmental documents, Project geotechnical reports and utility cut over coordination. The Contractor shall visit, review, and thoroughly familiarize itself with the site prior to bidding.

B. Public Relations:

1. Contractor and all Subcontractors/Suppliers shall be courteous and cooperative with the local businesses, residents and the general public.
2. When requested by the Engineer or required under this Contract, the Contractor shall attend meetings with the local general public, residents, businesses, and other stakeholders and interested parties.
3. Communications between the Contractor and residents and businesses adjacent to the Project shall be performed under the direction of and supervision of the Engineer. Verbal agreements or other communications between the Contractor and local residents and businesses shall be immediately disclosed to the Engineer.
4. The Contractor shall provide notice (via written flyer, approved by the SFMTA) to all residents and businesses within 400 feet of the boundary of any part of the Project that will be the site of construction activities for a period of 10 calendar days in advance of the following:
 - a. The beginning of construction Work at each location.
 - b. Changes in parking.
 - c. Other activities as deemed necessary by the Engineer.
5. The Contractor shall notify affected businesses and the Engineer on a weekly basis on the status of construction, planned changes, and expected completion date for the Work in that area.

C. Use of California Department of Transportation Property:

1. Contractor shall submit in writing a 30-day advance notice and conduct a walk-through with the Engineer prior to the utilization of any part of the temporary construction site at Fourth and Bryant Street.
2. For damages and improvements within the temporary construction site, Contractor shall refer to California Department of Transportation ("Caltrans") Air Rights Agreement and the terms in Caltrans airspace lease agreement for the lot (Lease Area No. 04-SF-BT-06), Resolution 10-159 of San Francisco Municipal Transportation Agency Board of Directors, dated 12/07/2010. ^{ADD. 6}
3. For restrictions on the usage of the temporary construction site, Contractor shall abide with Caltrans airspace lease agreement for the lot (Lease Area No. 04-SF-BT-06), Resolution 10-159 of San Francisco Municipal Transportation Agency Board of Directors, dated 12/07/2010. ^{ADD. 7}
4. All proposed uses and temporary improvements by the Contractor must be in conformance with the requirements in Right of Way Manual, Chapter 15.07, Exhibit 15-EX-12 and 15-EX-13. The information is available at <http://www.dot.ca.gov/hq/row/rowman/manual/ch15.pdf>.
5. For relocation of Caltrans equipments within Caltrans property, Contractor shall coordinate with Caltrans and submit proposed design for review. Contact information will be provided by the Engineer. ^{ADD 6}

D. Adverse Weather

Adverse weather shall mean rain, windstorm, flood, or other natural phenomena occurring at the Project site which exceeds the anticipated number of days of adverse weather as provided herein. Contractor shall plan the Work to allow for the following number of days of adverse weather during normal working hours:

<u>Month</u>	<u>Adverse Days</u>	<u>Month</u>	<u>Adverse Days</u>
January	3	July	0
February	3	August	0
March	2	September	0
April	1	October	1
May	0	November	1
June	0	December	3

1. Contractor's progress schedule shall incorporate allowance for the anticipated number of days of inclement weather as specified herein.
2. The Contract Times allowed for completion of Work specified are predicated on the anticipated number of days per month of adverse weather over the Contract Time specified herein.
3. Contractor shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the adverse weather event has been exceeded.
4. In the event that there are months with less than the anticipated number of adverse weather days specified herein, the City reserves the right to transfer the unused adverse weather days to other months of the Contract for which Contractor has requested a time extension because of adverse weather.

E. Tree Removal.

Tree removal and replacement shall conform to the requirements of the Tree Removal Permit on file and available for review in the office of the Engineer.

F. Compensation Grouting at 1435 Stockton Street.

Contractor shall provide to the property owner a 90 days advance notice for the utilization of the Bank of America parking lot for the compensation grouting work. A duration of 6 months continuous occupancy of the parking lot is allowed. During this period, Contractor shall maintain walk up access to ATM at all times, and allow maximum usage of the parking spaces when possible. Contractor shall include the utilization of the parking lot in Construction Staging Plan for approval.^{ADD. 4}

SP-7 CONTRACTOR PROVIDED INSURANCE (REPLACING GENERAL PROVISION SECTION 10.01)

A. Contractor's Liability Insurance

1. Contractor shall maintain in full force and effect, for the period covered by the Contract, the following liability insurance with the following minimum specified coverages or coverages as required by laws and regulations, whichever is greater:

- a. Worker's Compensation in statutory amount, including Employers' Liability coverage with limits not less than Two Million Dollars (\$2,000,000) each accident, injury, or illness, including coverage for U.S. Long Shore and Harbor Workers' Act benefits and Jones Act benefits, and Federal Employers Liability Act. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.
- b. Commercial General Liability insurance with limits not less than Five Hundred Million Dollars (\$500,000,000) each occurrence combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage, products, and completed operations.
- c. Commercial Automobile Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including owned, hired or non-owned vehicles, as applicable.

B. Additional Coverages

1. Builder's Risk Insurance: Contractor shall purchase and maintain in force, throughout the term of this Contract, Builder's Risk insurance on a "Special Form", excluding flood, on a Replacement Cost basis. Any deductible shall be the responsibility of Contractor including coverage for debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable law, ordinance or regulation. Such policy shall include as named insureds and be made payable to the City as the sole loss payee or if directed by the City to the Contractor, as

determined and in the amounts directed by the City in its sole discretion, and shall be issued by carrier(s) satisfactory to the City to conduct insurance business in California. In the event of damage, it shall be Contractor's responsibility to perform at its expense all required repair and replacement at no cost to the City. In accordance with Public Contract Code section 7105, in the event of damage caused by earthquake, Contractor shall not be responsible for losses in excess of 5 percent of the Contract Sum. Deductible for any Act of God as defined by Public Contract Code Section 7105 shall not exceed 2% / \$250,000 minimum. ^{ADD. 5}

2. Professional Liability Insurance: In the event that Contractor employs professional engineering or land surveyor services for performing field engineering or preparing design calculations, Plans and Specifications, Contractor shall require the retained engineers and land surveyors to carry professional liability insurance with limits not less than \$2,000,000 each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Contract. Contractor's professional liability policy should not have an exclusion for environmental compliance management or construction management professionals.
3. Environmental Pollution Liability: In the event that hazardous / contaminated material is discovered during the course of the work, and the Contractor or its subcontractors is required to perform abatement or disposal of such materials, then the Contractor, or its sub-contractor, who perform abatement of hazardous or contaminated materials removal shall maintain in force, throughout the term of this Contract, Contractor's pollution liability insurance with limits not less than Ten Million Dollars (\$10,000,000) each occurrence combined single limit, including coverages for on-Site or off-Site third party claims for bodily injury and property damage, with any deductible not to exceed \$50,000. Such policy shall not contain any claims-based or occurrence-based restrictions. Coverage shall included contractor and subcontractor's legal liability for contaminated soils and rock, in ground or airborne asbestos, lead, PCBs and other hazardous material that may be encountered on the Site. ^{ADD. 5}
4. Railroad Protective Liability: Purchase and maintain in force, throughout the term of this Contract, Railroad's Protective Liability Insurance with limits of not less than Ten Million U.S. Dollars (\$10,000,000) per occurrence and Ten Million U.S. Dollars (\$10,000,000) in the aggregate annually for losses arising out of bodily injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. This shall be applicable for operations performed within 50 feet vertically or horizontally of the centerline of BART's tracks. The named insureds shall include the San Francisco Bay Area Rapid Transit District and shall cover all other railroads operating on the right-of-way. The wording of this policy shall be subject to the approval of BART and the SFMTA. ^{ADD. 5}

C. Forms Of Policies And Other Insurance Requirements

1. Before commencement of the Work of this Contract, certificates of insurance and policy endorsements in form and with insurers acceptable to the City, evidencing all required insurance and with proper

endorsements from Contractor's insurance carrier identifying as additional insureds the parties indicated under Article "Insurance for Others" above, shall be furnished to the City, with complete copies of policies to be furnished to the City promptly upon request. Contractor will be allowed a maximum of 5 Working Days, after the date on which the Contract is awarded, in which to deliver appropriate bond and insurance certificates and endorsements.

2. Approval of the insurance by the City shall not relieve or decrease the extent to which Contractor or subcontractor of any tier may be held responsible for payment of any and all damages resulting from its operations. Contractor shall be responsible for all losses not covered by the policy, excluding damage caused by earthquake and flood (whether caused by storm or tidal wave) consistent with section 7105 of the California Public Contract Code in excess of 5 percent of the Contract Sum, including the deductibles. All policies of insurance and certificates shall be satisfactory to the City.
3. The Contractor and its subcontractors shall comply with the provisions of California Labor Code section 3700. Prior to commencing the performance of Work, the Contractor and all of its subcontractors shall submit to the awarding department a certificate of insurance against liability for workers compensation or proof of self-insurance in accordance with the provisions of the California Labor Code.
4. Liability insurance, except for professional liability insurance, shall be on an occurrence basis, and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.
5. Except for professional liability insurance, should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such general annual aggregate limit shall be two times the occurrence limits stipulated. City reserves the right to increase any insurance requirement as needed and as appropriate.
6. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Contract, and without lapse, for a period 5 years beyond the Contract Final Completion date, to the effect that, should occurrences during the Contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.
7. All insurance policies required to be maintained by Contractor hereunder shall be endorsed to provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to the City. All notices shall be made to: ^{ADD. 5}

Deputy, Contract Administration and Quality Management
Capital Projects and Construction
SFMTA
1 South Van Ness Avenue, 3rd Floor
San Francisco, CA 94103

and to:

Risk Manager
City and County of San Francisco
25 Van Ness Avenue, 4th Floor
San Francisco, CA 94103

8. Contractor, upon notification of receipt by the City of any such notice, shall file with the City a certificate of the required new or renewed policy at least 10 Days before the effective date of such cancellation, change or expiration, with a complete copy of new or renewed policy.
9. If, at any time during the life of this Contract, Contractor fails to maintain any item of the required insurance in full force and effect, all Work of this Contract may, at City's sole option, be discontinued immediately, and all Contract payments due or that become due will be withheld, until notice is received by the City as provided in the immediately preceding Paragraph 7 that such insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to the City.
10. If Contractor is a joint venture partnership, the liability of each partner to the joint venture shall be joint and several. No insurance policy providing coverage under this Contract shall contain any provision prohibiting coverage of a joint venture partnership or otherwise limiting coverage any joint venture partner.

D. Indemnitees

1. For general liability insurance, Contractor shall include as additional insureds the City and County of San Francisco, the Bay Area Rapid Transit District, California Department of Transportation, and their respective its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.
2. For environmental pollution liability and automobile liability insurance, Contractor shall include as additional insured the City and County of San Francisco, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.
3. For all other insurances, Contractor shall include as additional insured the City and County of San Francisco, its boards members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them. ^{ADD. 5}

E. Insurer Qualifications

Insurance companies providing coverage for this Contract shall be legally

authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-,VIII" and shall be satisfactory to the City.

ADD. 5

SP-8 OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

A. General Information. ^{ADD. 5}

1. The City may implement an Owner Controlled Insurance Program (OCIP) to provide Workers' Compensation, Employer's Liability, Commercial General Liability, Excess Liability, Contractor's Pollution Liability, Builders Risk and Railroad Protective Liability insurance coverage for this Contract.
2. The specific provisions of the proposed OCIP, including coverage amounts and Contractor deductibles have not been established. The City anticipates making a final determination as to the OCIP prior to the issuance of NTP 1.
3. If the City implements an OCIP for this Contract, Contractor shall provide all insurance coverage of the types and amounts described in Section SP-7 except for the coverages provided under the OCIP.
4. If the City implements an OCIP for this Contract, the cost to Contractor for Workers' Compensation, Employer's Liability, Commercial General Liability, Excess Liability, Contractor's Pollution Liability, Builders Risk and Railroad Protective Liability insurance coverages will be deducted from the Total Bid Price as provided in Optional Bid Item GE- OP1. Bidders are cautioned not to state on their bid sheets less than the actual costs of said insurance coverage. The City may confirm said amounts by audit, and the City may reject any Proposal that is unbalanced.

SP-9 WAGE RATES FOR SPECIFIED EMPLOYMENTS (SUPPLEMENTING SECTION 11.01 OF THE GENERAL PROVISIONS)

- A. The Contractor and its subcontractors are advised that the City considers proper classification for employees who perform all electrical work associated with the installation of underground-fed traffic signals to be that of Electrician: Inside Wireman. Printed versions of the current General Wage Rate Determinations are available from City: contact Bernie Ancheta at (415) 701-4278. These rates are also available at <http://www.dir.ca.gov/DLSR/PWD>.

SP-10 TRUCKING AND HAULING OPERATIONS: SMALL BUSINESS SET-ASIDE ^{ADD. 3}

- A. The SFMTA Contract Compliance Office will create and maintain a list of pre-approved SBE Truckers/Haulers ("the CCO List" or "the List") which Contractor shall use for 50% of the trucking/hauling requirements of the Contract for materials hauled from the Site.
- B. For purposes of this Contract, a SBE Trucker/Hauler is a for-profit, small business concern with three-year average gross revenues not exceeding \$12 million and is certified under any one of the following programs:
1. California Unified Certification Program (CUCP) ("Federal DBE Program")

2. State of CA General Services ("State SBE Program")
 3. Human Rights Commission (HRC) ("City LBE Program"). (Only LBE Certified firms may be utilized to meet the SBE Set-Aside requirements. NPE, PUC/LBE or LBE/SBA Certified firms are not allowed.)
- C. For the purposes of this set-aside, all pre-approved SBE Trucker/Haulers on the CCO List meet the requirements for trucking/hauling Work performed under this Contract.
- D. Contractor shall contact pre-approved SBE Truckers/Haulers from the CCO List starting from those listed at the beginning of the List consecutively through to the end of the List, before starting again at the beginning of the List. The duration of time for an SBE Trucker/Hauler to work before its turn in the rotation expires shall be determined by the Contractor, provided said duration shall be applied equally to all SBE Truckers/Haulers on the List and shall not exceed ten (10) hauling days.
1. Example: Contractor establishes a rotation duration of eight hauling days. For the first day of trucking activities, Contractor calls the first six SBE Truckers/Haulers on the List, all of whom agree to perform. Those six SBE Truckers/Haulers shall each work for eight hauling days before their respective turns in the rotation end. After the eight-day hauling period has expired, Contractor will continue calling SBE Trucker/Haulers from the CCO List starting with the 7th trucker listed.
 2. If an SBE Trucker/Hauler on the CCO List is unable to participate when called, Contractor shall attempt to contact the next Trucker/Hauler on the List. If an SBE Trucker/Hauler on the CCO List declines to participate on more than three occasions, the Contractor shall notify the SFMTA, which will remove the SBE Trucker/Hauler from the List. SBE Truckers/Haulers who have been removed from the CCO List may apply to be reinstated to the List by clearly demonstrating, to CCO's satisfaction, that they will be able to participate when called. Any such reinstated SBE Trucker/Hauler will be placed on the CCO List in the position that would be the last to be called at that point in time.
 3. In no event shall SBE Truckers/Haulers be permitted to exchange positions on the List, nor shall an SBE Trucker/Hauler be permitted to offer a substitute in response to being called from the List. Contractor shall not revise the order of the List.
- E. Contractor shall submit within 60 Days of NTP 1, a Trucking and Hauling Program Plan ("the Plan") describing how the Contractor will organize its trucking and hauling program so as to fulfill the requirement to set-aside 50% of the trucking and hauling work for SBE Truckers/Haulers on the CCO List. The Plan shall include, but not limited to, requirements from this Section including the rate the Contractor has determined will be paid to SBE Truckers/Haulers and the documentation supporting the Contractor's setting of the rate.
- F. Contractor shall establish the rate to be paid for trucking and hauling work performed under the set-aside requirement.
1. Contractor may establish a separate rate for each classification of trucking

- equipment to be used on the Project (e.g., bottom dumps, end dumps, super dumps).
2. The rate established by Contractor shall be the same rate Contractor will pay for the trucking/hauling work that is not subject to this set-aside.
 3. Contractor's Plan shall identify the rate, and shall include documentation supporting the setting of that rate. Such documentation shall include a market analysis supporting the establishment of the rate, quotations from trucking firms, calculations, and a narrative statement describing the methodology and process used by Contractor in setting the rate.
- G. Contractor shall, at its discretion, arrange for truckers/haulers for the remaining 50% of the trucking and hauling work. Work performed by any SBE trucker/hauler listed by the Contractor in its bid shall count towards the Contractor's SBE participation goal; provided that if any such listed SBE trucker/hauler is also on the CCO List, Contractor shall, in its reporting to SFMTA, differentiate between such SBE trucker/hauler's work to be counted towards the SBE participation goal, and such SBE trucker/hauler's work performed pursuant to the set-aside rotation process. Under no circumstance shall an SBE trucker/hauler's work be simultaneously credited towards both the Contractor's SBE participation goal and the set-aside requirement.
- H. Contractor shall maintain records to document the trucking/hauling utilization. Contractor shall maintain and submit with the monthly Progress Payment Application a log with supporting documentation showing utilization of the listed SBE Truckers/ Haulers from the List with the following information for the prior month:
1. Names of SBE Trucker/Haulers on the CCO List contacted by date.
 2. Names of SBE Trucker/Haulers on the CCO List hired and period of hire, with vehicle number(s).
 3. Names of SBE Trucker/Haulers on CCO List contacted but not hired with reason for not hiring them.
 4. Dates trucking/hauling were performed by each SBE and non-SBE Trucker/Hauler.
 5. Description of materials trucked/hauled.
 6. Destination location(s) for the trucked/hauled materials.
 7. Destination receipt number, net weight, estimated volume, and material classification.
 8. Monthly subtotal of net weight and estimated volume for SBE Trucker/Haulers on CCO List.
 9. Monthly subtotal of net weight and estimated volume for all other truckers/haulers.
 10. Copies of all invoices received from truckers/haulers (both SBE and non-SBE) for that month.
- I. For the purpose of meeting the 50% SBE Trucking/Hauling set-aside, the Contactor shall calculate the utilization of SBE Trucker/Haulers on the CCO List by weight of materials hauled.

- J. SFMTA will monitor and enforce the SBE Trucker/Hauler set-aside requirements in accordance with the provisions of the Small Business Enterprise Program (“the Program”) included in the bid specifications. Failure to comply with the set-aside requirements may subject Contractor to the enforcement mechanisms provided for in the Program. Refer to Part One, Sec. IV.C.5 of the Program.
1. SFMTA will bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the Program so that DOT can take the steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Section 26.109. Contractor may also be subject to penalties and/or a debarment action under the San Francisco Administrative Code, or liquidated damages for failure to meet particular contract SBE requirements. Failure to comply with the requirements of the SBE Program constitutes a material breach of contract and will be grounds for termination of the contract. Funds may also be withheld under the Contract pending investigation of a complaint of violation of the SBE Program.
 2. If the Contractor fails to meet either the requirements of the trucking set-aside or the SBE participation goal called for under the Contract, and has failed to demonstrate good faith efforts to do so, SFMTA will suffer actual damages that will be impractical or extremely difficult to determine. Such damages may include, but are not limited to, potential loss of all or part of FTA grant(s), and the costs of implementation, administration, and enforcement of SFMTA’s SBE Program. The liquidated damages shall not be considered a penalty, but rather agreed monetary damages sustained by SFMTA because of Contractor’s failure to comply with the SBE requirements. SFMTA may deduct these liquidated damages from any payments due the Contractor or from any funds retained.
 3. If the Contractor fails to meet (a) the requirements of the SBE trucking set-aside goal, or (b) the overall contract SBE participation goal, and (c) is unable to demonstrate good faith efforts to meet such goals, the SFMTA may impose liquidated damages in an amount equal to the difference between the SBE participation goal/trucking set-aside requirement and the actual SBE goal/trucking set-aside attainment at the time a deficiency is determined, multiplied by the liquidated damage assessment as set forth below.
 4. The Contractor shall pay an amount of \$10,000.00 for each tenth (0.1%) percentage point below the SBE goal/trucking set-aside.
 5. Example: For this Contract there is a 6% SBE participation goal. Should Contractor achieve only 4.59% SBE participation at Contract closeout and fail to demonstrate good faith efforts to meet the goal, the liquidated damages would be as follows:
 - a. 6 minus 4.59, or 1.41 percentage points, multiplied by \$10,000.00 for each .1% point, for a total of \$141,000.00.

SP-11 KEY PERSONNEL

- A. Contractor shall not assign to other projects or otherwise remove from performing the Work under this Contract those persons identified as Key Personnel in Contractor's Proposal, without the express written permission of the Engineer. If a person who is identified as Key Personnel leaves Contractor's employment or becomes unavailable due to circumstances beyond Contractor's control, Contractor shall immediately provide notice to the City and within 15 Days of said notice, propose replacement personnel for the Engineer's review and approval. Persons replacing Key Personnel must have equivalent experience and expertise as the Key Personnel they replace.
- B. Contractor shall through the Engineer seek the SFMTA's prior approval if it wishes to reassign to another project any person identified in its Proposal as Key Personnel. The SFMTA shall not unreasonably deny such request, as long as such reassignment does not delay, cause a loss or reduction in productivity, or otherwise impair the Work.

SP-12 EASEMENT BOUNDARY

- A. SFMTA has acquired the Right of Way for the project where the tunnel alignment lies underneath existing private properties. See Attachment 1 to Special Provisions containing legal descriptions of the parcel plats for the project's permanent easement boundary of the following locations:
 - 1. Block 0130, Lot 001
 - 2. Block 0328, Lot 002
 - 3. Block 3705, Lot 048

SP-13 MATERIALS ON HAND

- A. Payment for material or equipment procured by Contractor but stored on or off the Site and not incorporated in the Work will not be allowed, except as set out herein. The City will make payment for material or equipment procured by Contractor and not incorporated in the Work if the material or equipment is: (i) unique to the Work and approved by the City for prepayment in advance; and (ii) either stored on the Site or at an off-Site location approved in advance and in writing by the City. Should the City agree to make payment for such material or equipment, all of the following shall apply:
 - 1. Contractor shall submit to the City proof of off-Site material purchases, including bills of sale, invoices, or other documentation warranting that Contractor has received the materials free and clear of all liens, charges, security interests, and encumbrances.
 - 2. Title to stored material shall be vested in the City at time of delivery to the Site or off-Site warehouse
 - 3. If material to be stored is delivered to the Contractor free on board manufacturer, then title shall pass to City at the manufacturer's loading dock.

4. Contractor shall obtain a negotiable warehouse receipt, endorsed over to the City, for material stored in an off-Site warehouse. No payment will be made until endorsed receipts are delivered to the City.
5. Contractor, at no additional cost to the City, shall insure stored material against theft, fire, loss, vandalism, and malicious mischief covering said material while in storage off-site, in transit and on-site until incorporated into the Work. Contractor shall deliver the policy or certificate of such insurance to the Engineer naming the City as additional insured. Insurance shall not be cancelable without a minimum of 30 Days notice to the City, and cancellation shall not be effective until notice thereof is given to the City.
6. Contractor shall furnish to the City written consent from Contractor's sureties approving the advanced payment for materials stored off or on the Site.
7. The maximum prepayment allowed by the City shall be 75 percent of the fair market value of the Item prepaid. The City shall be the sole judge of fair market value.
8. Contractor shall protect stored materials from damage. Damaged materials, even though paid for, shall not be incorporated into the Work.
9. Stored materials shall be available for inspection by the City.
10. Contractor shall deliver stored materials to the Site.
11. After delivery of stored materials to the Site, if any inherent or acquired defects are discovered therein, such defective material shall be removed and replaced with suitable materials at no additional cost to the City.
12. In the event of loss of or damage to prepaid materials, Contractor shall be responsible for replacing the lost or damaged materials at its own cost and shall be responsible for all delays incurred on the Project as a result of such loss or damage.
13. Nothing in this Section shall relieve Contractor of its responsibility for incorporating materials in the Work that conform to the requirements of the Contract Documents.

SP-14 OWNERSHIP AND MAINTENANCE OF SPECIALIZED EQUIPMENT

- A. Contractor acknowledges and agrees to the following:
 1. The Specialized Equipment, including but not limited to the Tunnel Boring Machines, trailing gear, conveyors, air lines, ventilation fans and lines, and temporary utilities, dewatering and desilting equipment, lights and other equipment listed in Division 1, Section 01-12-19, ¶ 1.04 (Contract Interface) were purchased specifically for the Work under this Agreement using grant funds provided by the Federal Transit Administration (FTA) under payment provisions of the Contract. Contractor, except as provided herein, shall have ownership of the Specialized Equipment during and after the term of the Contract. The Specialized Equipment, including but not limited to the Tunnel Boring Machines, trailing gear, conveyors, air lines, ventilation fans and lines, and temporary utilities, dewatering and

desilting equipment, lights and other equipment listed in Division 1, Section 01-12-19, ¶ 1.04 (Contract Interface) were purchased specifically for the Work under this Agreement using grant funds provided by the Federal Transit Administration (FTA) under payment provisions of the Contract. Contractor, except as provided herein, shall have ownership of the Specialized Equipment during and after the term of the Contract.

2. To the extent that the Specialized Equipment is not considered Contractor provided excavation equipment, the Specialized Equipment shall be considered temporary construction. The status of the Specialized Equipment notwithstanding, the payment provisions of the Contract for Specialized Equipment are an exception to the general practice of the SFMTA and an exception to generally applicable rules of the FTA that the owner does not separately pay for contractor provided equipment necessary to perform the Work. . Based on said exception, Contractor therefore recognizes that the SFMTA and the FTA have and shall retain until Final Acceptance a property interest in the Specialized Equipment from which the SFMTA and FTA cannot be divested or otherwise alienated by any action of law without the written authorization of those agencies.
3. Upon any Event of Default of Contractor, as that term is defined in Article 14 of the General Provisions, if demanded by the SFMTA, the unrestricted and unencumbered title and ownership of the Specialized Equipment shall transfer to the SFMTA. Further, should Contractor declare bankruptcy, seek bankruptcy protections, is adjudged bankrupt by a court of competent jurisdiction, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency, the title and ownership of the Specialized Equipment shall immediately transfer in whole and part to the SFMTA without restriction or encumbrance. Said immediate transfer is a material obligation of the Contractor that shall be guaranteed by the surety that issues the Performance Bond for this Contract.
4. Should the SFMTA exercise the protections (i.e., "call") the Performance Bond in the event of Contractor's default, upon acceptance of the City's bond claim by the surety, the SFMTA shall transfer the title and ownership of the Specialized Equipment to the Surety for the purposes of completing the Work.
5. Contractor shall at times during the term of the Contract maintain the Specialized Equipment in good repair and function as recommended by the manufacturer and so that it can perform the Work as required by the Project Schedule. Contractor shall at all times be responsible for any delays caused by malfunction, lack of function, reduced function or delays Contractor's maintenance of the Specialized Equipment, including but not limited to delays during maintenance activities and delays caused by malfunction or breakdown of the Specialized Equipment. At no time shall the SFMTA be responsible for any delays caused by the malfunction, reduced function, or maintenance of Specialized Equipment, the risk and costs of which shall remain with and by borne by the Contractor and guaranteed by the surety under the Performance Bond.

SP-15 SECURITY SENSITIVE INFORMATION**A. Design Documents are Security Sensitive Information:**

1. The Drawings and related design documents that are provided to Contractor to perform the Work under the Contract are Security Sensitive Information ("SSI Documents"), as that term is defined under applicable federal law and federal Department of Transportation security policies. 49 CFR 15 and 1520.
2. The SSI Documents are identified by the markings printed on individual drawings and exterior covers of drawing sets that indicate that they are SSI Documents.
3. The SSI Documents show detailed designs of the tunnels for the Central Subway Project. Contractor recognizes that access to the SSI Documents by unauthorized persons or organizations would pose significant risk of grave harm to the Central Subway Project and public safety.

B. Use of the SSI Documents:

1. Contractor shall use the SSI Documents only for the purposes of performing the Work under the Contract, and for no other purpose.
2. Contractor shall guard the SSI Documents safe and secure at all times from disclosure to unauthorized personnel, and shall only allow access to the SSI Documents to persons with a "need to know" for performing the Work. When the SSI Documents are not being used to perform the Work, the Contractor shall keep the SSI Documents in a locked, secure area so that the SSI Documents are not physically or visually accessible to persons who are not directly involved in the preparation of the Contractor's Bid for the Contract. When unattended, the SSI Documents must be secured in a locked container, office, or other restricted access area with access to the keys or combination limited to those with a need to know.
3. Contractor shall not copy, publish, circulate or use any of the SSI Documents for any purpose other than performing the Work under this Contract, without first obtaining the SFMTA's written approval to do so.

C. Disposal of the SSI Documents:

After Final Acceptance of the Work or earlier termination of the Contract, Contractor may keep one set of the SSI Documents for its internal use only, but shall return all other sets of SSI Documents or destroy them, as follows:

1. SSI Documents shall be returned to:
San Francisco Municipal Transportation Agency
Construction and Capital Projects
Attention: Shahnam Farhangi
1 South Van Ness, 3rd floor
San Francisco, CA 94103
2. If not returned to the SFMTA, the SSI Documents must be destroyed in a manner that ensures recovery of the information contained therein would be difficult, if not impossible. Any means approved for the destruction of national security classified material such as machine shredding, may be

used to destroy the SSI Documents. If no such means is available, the SSI Documents may be destroyed by cutting or tearing them into small pieces and assimilating it with other waste material. Compact discs or other physical electronic media containing the SSI Documents shall be broken to pieces. Electronic files containing the SSI Documents or any portion of them shall be deleted. Contractor shall certify to the SFMTA in writing that the SSI Documents have been destroyed as required herein.

D. Liability for Failure to Secure or Misuse of the SSI Documents:

Contractor shall be fully liable for any and all harm and damages that may arise from unauthorized persons or entities gaining access to the SSI Documents due to or arising from Contractor's failure to adhere strictly to the requirements of this Section. In addition to civil liability, Contractor is cautioned that violation of applicable laws and regulations concerning protection and use of Security Sensitive Information may subject Contractor to federal penalties.

E. Subcontractors:

Contractor shall include the provisions of this Section in any agreement with Subcontractor or Supplier that will require access to the SSI Documents, and Contractor shall be responsible for its Subcontractors' and Suppliers' adherence to the requirements of this Section.

SP-16 PRIVATE PROPERTY

- A. To the maximum extent provided by law, Contractor shall be solely liable for any damage to private property located along or within 300 feet of the Work where such damage is caused by or is otherwise related to or arising from the Work.
- B. Contractor shall obtain a license or other written permission from the owner of each property located along or within 300 feet of the alignment to enter to perform preconstruction documentation of the condition of property and improvements, to place monitoring equipment on the property, conduct monitoring during construction, to take such measures as may be required to protect said property from damage arising from the construction, and to repair any damage after construction is completed.
- C. Contractor shall be certain that such permission is obtained from the owner or authorized agent of the owner. Contractor shall immediately notify the Engineer if the owner refuses access or is otherwise uncooperative with Contractor. The Engineer will assist the Contractor in obtaining the property owner's permission to enter, but that assistance shall not relieve Contractor of its responsibility to document the preconstruction condition of properties, to monitor said properties during construction, and repair any damage arising from the Work.
- D. Prior to the Effective Date, the City may obtain a license or other permission or right to enter certain private properties for the purposes stated in paragraph B, above. The City shall assign such license to Contractor and

Contractor shall accept such assignment, or the City may name Contractor as permittee or licensee on such license.

- E. Contractor shall at all times maintain a professional and courteous demeanor in its interactions with owners of property along the alignment.

SP-17 DISCOVERY OF ARCHAEOLOGICAL SITES

- A. If archaeological materials, including but not limited to human skeletal material and disarticulated human bone, are discovered at the job site, protect and leave undisturbed and in place archaeological materials in accordance with the following codes and these special provisions:
1. California Public Resources Code, Division 5, Chapter 1.7 § 5097.5;
 2. California Public Resources Code, Division 5, Chapter 1.75 § 5097.98 and § 5097.99;
 3. California Administrative Code, Title 14 § 4308;
 4. California Penal Code, Part 1, Title 14 § 622-1/2; and
 5. California Health and Safety Code, Division 7, Part 1, Chapter 2, §7050.5.
- B. Archaeological materials are the physical remains of past human activity and include historic-period archaeological materials and prehistoric Native American archaeological materials. Nonhuman fossils are not considered to be archaeological except when showing direct evidence of human use or alteration or when found in direct physical association with archaeological materials as described in these Specifications.
- C. Historic-period archaeological materials include cultural remains beginning with initial European contact in California, but at least 50 years old. Historical archaeological materials include:
1. Trash deposits or clearly defined disposal pits containing tin cans, bottles, ceramic dishes, or other refuse indicating previous occupation or use of the site;
 2. Structural remains of stone, brick, concrete, wood, or other building material found above or below ground; or
 3. Human skeletal remains from the historic period, with or without coffins or caskets, including associated grave goods.
- D. Prehistoric Native American archaeological materials include:
1. Human skeletal remains or associated burial goods such as beads or ornaments;
 2. Evidence of tool making or hunting such as arrowheads and associated chipping debris of fine-grained materials such as obsidian, chert, or basalt;
 3. Evidence of plant processing such as pestles, grinding slabs, or stone bowls;
 4. Evidence of habitation such as cooking pits, stone hearths, packed or burnt earth floors; or

5. Remains from food processing such as concentrations of discarded or burnt animal bone, shellfish remains, or burnt rocks used in cooking.
- E. Immediately upon discovery of archaeological materials, stop all work within a 60-foot radius of the archaeological materials and immediately notify the Engineer. Archaeological materials found during construction are the property of the City. Do not resume work within the 60-foot radius of the find until written approval is issued by the Engineer.
- F. Archaeological Specifications for the TBM Launch Box Construction:
1. The Contractor shall retain the services of a qualified Archaeologist to carry out these provisions. The Archaeologist shall be selected from the City Planning Department's list of approved consultants in consultation with the Engineer..
 2. The Contractor will attend a pre-construction meeting with the Archaeologist and the Engineer. The meeting will discuss the work within the project site, notification procedures, the Archaeologist's authority, construction equipment and labor needs, and any planned work that may affect the project site. The meeting will be arranged by the Engineer and will be held within 10 working days after the NTP for construction of the TBM Launch Box.
 3. The Contractor's ground-disturbing work will be monitored by the Archaeologist in conformity with the Archaeological Monitoring Plan , reporting to the Engineer..
 4. If archaeological remains are uncovered during excavation or other construction related activities, the Contractor will:
 - a) Require the Archaeologist to consult with the Engineer before beginning field investigations of archaeological remains.
 - b) Ensure that the Archaeologist carries out the requirements of the Program Level Archaeological Research Design and Treatment Plan.
 - c) Provide suitable temporary access and egress ramps, ladders, or stairs to the remains, as well as appropriate shoring, to facilitate the work of the archaeological team.
 - d) Provide, as needed, two laborers to assist with unskilled tasks associated with the investigation; a backhoe-loader or similar equipment with a wide bucket and moe-board and operator; a lockable storage facility (for duration of the project).
- G. Full compensation for providing the services of the monitoring Archeologist and for immediately notifying the Engineer upon discovery of archaeological materials and leaving undisturbed and in place archaeological materials discovered on the job site shall be considered as included in the Contract price paid for various items of work involved and no additional compensation will be allowed. Upon discovery and written notification of any archeological materials, costs for mitigation measures shall be provided as additional work under the Allowance set-aside within the Contract for that purpose.

SP-18 FEDERAL CONTRACTING REQUIREMENTS**18.01 COMPLIANCE AND PRECEDENCE**

Contractor shall comply with all applicable federal contracting requirements, including but not limited to those set out in this Section SP-18. If there is any conflict between any federal contracting requirement and any provision of this Contract, the federal requirement shall prevail. The provisions contained in the document entitled "FTA Requirements for Construction Contracts" are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Contract, the FTA terms and conditions shall take precedence."

18.02 DEFINITIONS

- A. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- B. Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.
- C. Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.
- D. Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.
- E. FTA Directive includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.
- F. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- G. Government means the United States of America and any executive department or agency thereof.
- H. Project means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.
- I. Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

- J. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.
- K. Third Party Contract means a contract or purchase order awarded by the Recipient to a vendor or Contractor, financed in whole or in part with Federal assistance awarded by FTA.
- L. Third Party Subcontract means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.
- M. U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

18.03 BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (less than \$100,000) made with capital, operating, or planning funds. Contractor agrees to be solely responsible for all costs relating to compliance with the Buy America requirements. Failure to comply with these requirements constitutes a material breach of this contract. See 49 CFR § 661.17. Contractors who intentionally or willfully fail to comply with the Buy America requirements may also be subject to debarment or suspension proceedings. 49 CFR §§ 661.18, 661.19.

18.04 CARGO PREFERENCE REQUIREMENTS - Use of United States-Flag Vessels

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

18.05 SEISMIC SAFETY REQUIREMENTS

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and Contractor will certify to compliance to the extent required by the regulation.

The Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

18.06 ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in any state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

18.07 ACCESS TO RECORDS AND REPORTS

- A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17, to provide the FTA Administrator or his authorized representatives, including any PMO Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- B. In all contracts between the City and County of San Francisco and the Contractor for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) entered into through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- C. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- D. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the City and County of San Francisco, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

18.08 CLEAN AIR REQUIREMENTS

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and County of San Francisco and understands and agrees that the City and County of San Francisco will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

18.09 CLEAN WATER REQUIREMENTS

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

18.10 RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

18.11 DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

A. Minimum Wages

1. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph A.4 of this section; also, 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 29 CFR Part 5.5(a)(4). 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. The wage determination (including any additional classifications and wage rates conformed under paragraph A.2 of this section) and the Davis-Bacon poster (WH-1321) 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.

2. a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - i. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - ii. The classification is utilized in the area by the construction industry; and
 - 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 as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), 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 Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The 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.
- c. In the event the Contractor, the laborers or mechanics to be employed in the 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 Administrator for determination. The 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.

- d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A.2.b. or c. of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
3. 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 shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
4. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as 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.
5. a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 - i. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - ii. The classification is utilized in the area by the construction industry; and
 - iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), 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 Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The 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.
- c. In the event the Contractor, the laborers or mechanics to be employed in the 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 Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 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. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A.5.b or c. of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- B. Withholding - The Municipal Transportation Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor 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, so 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, MTA may, after written notice to the Contractor, sponsor, applicant, or owner, 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.
- C. Payrolls and Basic Records
1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of 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. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) 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 shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under

approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2.
 - a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the MTA for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. 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 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.
 - b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or 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 section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - ii. That each 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 Regulations, 29 CFR part 3;
 - iii. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - c. 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 C.2.b. of this section.
 - d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
3. The Contractor or subcontractor shall make the records required under paragraph C.1 of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, 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 Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action 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.

D. Apprentices and Trainees

1. Apprentices - 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 U.S. Department of Labor, 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 or 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. The allowable ratio of apprentices to journeymen 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 worker 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 on 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 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's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. 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 journeymen 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 of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. 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 will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2. Trainees - 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 U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman 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 wage rate on the wage determination which provides for less than full fringe benefits for apprentices. 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. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor 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.
 3. Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- E. Compliance with Copeland Act requirements - The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
 - F. Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
 - G. Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
 - H. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

- I. Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 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 U.S. Department of Labor, or the employees or their representatives.
- J. Certification of eligibility
 1. By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 2. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

18.12 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- A. Overtime requirements - No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph A. of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A. of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph A. of this section.
- C. Withholding for unpaid wages and liquidated damages - The MTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys 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 B. of this section.

- D. Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A. through D. of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A. through D. of this section.

18.13 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

- A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

18.14 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

18.15 CIVIL RIGHTS REQUIREMENTS

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.
 2. During the performance of this contract the Contractor agrees as follows:
 - a. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
 - c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- d. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - e. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - f. The Contractor will include the provisions of subsections 1 and 2 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the City and the United States to enter into such litigation to protect the interests of the City and the United States.
3. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 4. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. Equal Opportunity Clauses

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes persons who are:
 - i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7.a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and

female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women, shall excuse the Contractor's obligations under these specifications, Executive Order 11246, as amended, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community

organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7.b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and

- employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7.a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7.a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however,

is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

18.16 SUBSTANCE ABUSE

Contractor shall comply with U.S. DOT regulations, "Drug Free Workplace Requirements (Grants)" 49 C.F.R. Part 29, Subpart F, and other applicable U.S.DOT and FTA regulations and guidance pertaining to substance abuse (drugs and alcohol) that may be promulgated.

18.17 BONDS

See Section 10.02 of General Provisions.

18.18 DEBARMENT AND SUSPENSION

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

18.19 FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

18.20 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

18.21 FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

18.22 FEDERAL RULES OF ACQUISITION NOT APPLICABLE

The City has not adopted the Federal Rules of Acquisition (FRA). Except as specifically stated in this Contract: (1) this Contract is not subject to the FRA; and, (2) for purposes of interpreting or enforcing the Contract, the City shall not be bound by the FRA or any court decision interpreting the FRA.

SP-19 GUARANTEES OF SURETY

Upon request by the City, the surety or sureties that issued the performance and payment bonds specified in the General Provisions shall provide evidence of reinsurance or other capital or security to establish to the satisfaction of the SFMTA that said surety or sureties have sufficient assets to guarantee completion of the Work.

SP-20 LABORER'S TUNNEL WORKER PREPAREDNESS PROGRAM (LTWPP) ^{ADD. 4}

- A. The Northern California District Council of Laborers (NCDCL), a labor organization affiliated with the Laborers' International Union of North America, in collaboration with the CityBuild program, has developed a training program for tunnel laborers. The program is designed to educate and train potential tunnel laborers. The LTWPP in collaboration with CityBuild and Laborers Local 261 will initially identify and select potential candidates for the program. The candidates will then be interviewed by a panel composed of representatives from the Laborers Training Center, CityBuild, the SFMTA, the Contractor, and the Laborers Union. Selected candidates will undergo a drug test and pending a negative result they will be enrolled into the program.
- B. The curriculum consists of 80 hours of classroom and on-the-job training and covers several introductory topics specific to tunnel work. The classes are to be held at the Laborers' Training Center (LTC) in San Ramon, California and Tucson, Arizona.
- C. The Contractor shall include within its bid the training fees that will be payable to the NCDCL for 3 groups of 15 trainees (for a total of 45) the sum of \$4500 per trainee (for a total of \$202,500). The training of these groups will occur over a 12 month period. All other administrative and coordination costs associated with this training and its implementation shall be borne by the Contractor as Incidental Work.
- D. Any of the trainees that successfully complete the LTWPP training and are hired and sponsored by the Contractor will be indentured into the Laborers Apprenticeship Program.

SP-21 CONSTRUCTION MANAGEMENT TRAINEE PROGRAM ^{ADD.5}

- A. The intent of this Program is to provide technical training and job opportunities in a construction office environment for economically disadvantaged individuals as on-the-job trainees. These training opportunities will be executed throughout the duration of this project. In hiring prospective trainees, the Contractor shall comply with the non-discrimination provisions of Section 15.02 of the General Provisions and Section 18.15 of the Special Provisions.
- B. Trainees shall be obtained through the designated community based organizations (CBOs) and other similar employment and training agencies. Outreach should be done to include individuals from the communities surrounding the Central Subway Project (Chinatown and South of Market), in as much as these communities will be impacted by the construction activities of the projects. CBOs that are working with public agencies have job readiness programs designed to teach applicants how to meet the pre-requisites of potential job opportunities on construction projects such as the Central Subway Project. A list of CBOs may be obtained from SFMTA.
- C. The Construction Management Trainee Program will consist of at least 10,000 hours of on-the-job training, which shall be implemented by the Contractor. These individuals will be hired as regular employees of the firm(s) and shall receive any benefits that they may be entitled to under State labor laws.
- D. The trainee must be hired in a non-trade professional construction management or meaningful construction management support position in areas such as the following:
 - 1. Project Management
 - 2. Construction Management
 - 3. Scheduling
 - 4. Cost Estimating
 - 5. Quality Control
 - 6. Project Engineer
 - 7. Field engineer
 - 8. Office AdministrationFor all positions above, with the exception of Office Administration, no more than 30% of trainee time should be spent on clerical work.
- E. No existing employee may be counted towards meeting the trainee goal. However, the new trainees can be part of the pool of new employees that the Contractor may have to hire anyway for a new project of this magnitude and therefore need not be an "extra" cost to the Contractor or to the City.
- F. The Contractor may satisfy the above 10,000 trainee hours through other projects it has in the San Francisco Bay Area within three years after the effective date of the Notice to Proceed.
- G. The Contractor is responsible for providing On-The-Job Training (OJT). The Contractor shall hire the trainee on a full-time basis for at least 12 months or on

a part-time basis for 24 months, offering him/her OJT, which allows the trainee to progress on a career path. The Contractor may hire the trainee(s) for the duration of the project.

- H. The Contractor should submit for approval a job description to SFMTA and summary of the training program for each trainee, with the proposed rate of pay (commensurate with the job requirements).
- I. The trainee is defined as a socially and economically disadvantaged individual who:
 - 1. Is unemployed, has a history of unemployment, or who is currently in a job training program; and
 - 2. Will receive training in a non-trade discipline associated with the Construction industry.The term "socially and economically disadvantaged individual" shall have same meaning as the term is defined in 49 CFR Section 26.5.
- J. The Contractor shall provide additional office equipment (i.e., computers, desks and chairs) for trainees. The Contractor shall provide travel costs if the individual has to travel 50 miles or more to get to the job.
- K. The Contractor shall design a training program specifically for the trainee. The program shall include, but not be limited to company's personnel policy procedures manual, benefit package and OJT duties and responsibilities. Construction Management trainees are not permitted to work in a trade position.
- L. The Contractor shall provide SFMTA within twenty (20) working days of Notice to Proceed 1 the following information in order to expedite time in securing the appropriate person to participate during the project:
 - 1. Indicate number of trainees to be hired. The hiring of trainees can be phased in over a period of time.
 - 2. Provide the name and telephone number of Contractor's contact person.
 - 3. The Contractor shall provide a job description used to recruit the trainee(s).
 - 4. A college degree is not a requirement for a trainee and the job description should so indicate.
- M. The Contractor shall submit to SFMTA on a monthly basis a Workforce Information Report regarding the status of the trainees.
- N. SFMTA's Contract Compliance Office will monitor the contract trainee requirements for compliance.
- O. The Contractor agrees that the City may withhold pending and future progress payments should the Contractor not demonstrate good faith efforts toward satisfying the required number of trainee hours.

SP-22 JOB-READINESS PROGRAMS ^{ADD.5}

- A. Contractor shall support job-readiness programs operated by community-based organizations familiar with the impacted areas to prepare applicants for placement via the CityBuild/First Source Referral Program in entry-level and apprentice trade and non-trade positions (e.g., pedestrian monitoring/flagging).

SP-23 SUBWAY FACILITIES PROTECTION AND UNDERCROSSING REQUIREMENTS ^{ADD. 7}

- A. The Undercrossing.
 - 1. The Bay Area Rapid Transit District (BART) owns and operates dual bore subway tunnels, underground transit stations and related utilities and infrastructure (the "BART Facilities") located under Market Street in San Francisco, California. The City operates the Market Street Tunnel, subway stations located along the tunnel, and related utilities and infrastructure (the "SFMTA Subway Facilities") located above the BART Facilities. Collectively, the BART Facilities and the SFMTA Subway Facilities are referenced herein as the "Subway Facilities."
 - 2. Construction of the Project will require undercrossing by the Central Subway Tunnel of the Subway Facilities located adjacent to the Powell Street Station (the "Undercrossing") as described in the Contract Documents.
 - 3. Contractor acknowledges and stipulates to the following:
 - a. The Subway Facilities are critical public transit infrastructure that is vital to the economies of the San Francisco Bay Area and the City.
 - b. The BART Facilities carry tens of thousands of passengers daily to and from East Bay communities into San Francisco and as far south as Millbrae and to the San Francisco International Airport.
 - c. The SFMTA Subway Facilities carry tens of thousands of passengers daily to and from southern and western regions of San Francisco and Downtown San Francisco.
 - d. Damage or other adverse impact arising from Contractor's Work to the Subway Facilities that causes or results in any interruption of public transit service provided by BART or the SFMTA will cause far reaching economic harm to BART and the SFMTA, the City, and to residents, visitors and businesses served by those agencies. The unavailability of any of the Subway Facilities for public transit use during a weekday due to Contractor's Work would cause widespread gridlock to Bay Area freeways, toll ways, roads, bridges and ferries and to City streets. Members of the public prevented from or delayed in commuting to work or traveling in commerce caused by that gridlock would thereby incur damages that as of the Effective Date of this Agreement that would be impossible to calculate or fully assess.
 - 4. Contractor's adherence to the requirements stated in the Contract Documents is intended to avoid the damages and losses described above

and are material requirements of the Agreement. Contractor's failure to abide by any of the requirements and specifications stated in the Contract shall constitute default of the Contract. Notwithstanding the requirements and specifications stated in the Contract, Contractor shall take every precaution possible and shall make every effort possible to protect the Subway Facilities from damage or other adverse impacts of every kind arising from Contractor's performance of the Work.

B. Building Protection Instrumentation.

1. Contractor shall implement in the BART Facilities the protections and install the protective and monitoring equipment described in the Contract Documents. Contractor shall recommend to the Engineer any additional protective measures it believes should be implemented to protect the Subway Facilities from adverse impacts of the Work. Contractor shall be responsible for the monitoring, maintenance, and repair of said equipment, as well as the installation of any additional monitoring equipment required by the Engineer. Contractor shall coordinate with the Engineer to access the BART Facilities install, monitor, maintain and repair such equipment or to perform any other Work necessary for the Project. Contractor shall be responsible for obtaining any required permits from BART for such access. Contractor shall comply with BART access requirements, including, but not limited to, the creation and implementation of a Site Specific Work Plan and adherence to the BART Operating Rules and Procedures Manual.

C. Independent Review Panel.

1. BART and SFMTA have agreed to convene and maintain an Independent Review Panel ("IRP") comprised of experts in tunnel engineering and construction. The IRP shall review the progress of the Project and the performance of the Contractor at designated points along the alignment approaching the Undercrossing. The IRP will provide BART, the Engineer, and the Contractor with expertise, advice and consultation as to the design and construction of the Undercrossing specifically with regard to:
 - a. Protective measures for and avoidance of damage to the Subway Facilities;
 - b. Hydrology and water issues;
 - c. Settlement and movement of ground, structures, infrastructure, buildings and other improvements along the alignment in the Undercrossing and along Fourth Street and Stockton Street;
 - d. Review of Contractor's adherence to the Specifications at Tunnel Construction Review Points (TCRP), as described below, including but not limited to accuracy of Contractor's operation, location and guidance of the TBM and tunnel construction;
 - e. Review of Contractor's Subway Facilities undercrossing strategy and work plans;

- f. Effective placement and use of equipment and resources to prevent, correct and otherwise mitigate the aforementioned settlement, as specified in the Contract Documents.
 2. As directed by the Engineer, the Contractor shall meet, confer, share information, and respond to comments, questions, concerns, and requests for information of the SFMTA, BART, and the IRP and any member of the IRP as to means, methods, procedures and scheduling the construction of the Tunnel. The costs of said Work shall be considered as Incidental Work.
- D. Tunnel Construction Review Points.
 1. Baseline Data Set. Commencing with tunneling operations at the TBM Launch Box, Contractor shall assist the IRP and the Engineer in compiling and reviewing necessary data concerning the settlement of ground and improvements and TBM operation data to establish a baseline data set against which settlement along the Project alignment during and after TBM operation and tunnel construction may be measured.
 2. Tunnel Construction Review Points South of Market Street. There shall be four (4) Tunnel Construction Review Points (TCRP) located south of the Undercrossing, which are identified by Control Line coordinates (CTL). The four TCRP are as follows:
 - a. TCRP-1 Folsom Street. CTL 156+50.
 - b. TCRP-2 Howard Street. CTL 150+00.
 - c. TCRP-3 Mission Street. CTL 144+00.
 - d. TCRP-4 Market Street. CTL 140+50.
- E. IRP Review and Recommendations.
 1. Throughout the construction of the Tunnel, as needed and at each TCRP, the IRP will review data gathered by the Engineer, BART, and the Contractor regarding settlement of land and improvements along the Project alignment.
 2. If Contractor objects to a recommendation of the IRP, it must state an engineering basis for its objection and must also propose an alternative approach or action to prevent and avoid further settlement greater than that allowed under the Contract. The Contractor shall not implement its proposed alternate approach or action unless reviewed by the IRP and the Engineer and memorialized in a Change Order.
- F. Contractor Shall Control Construction Means and Methods. Notwithstanding any recommendation of the IRP, the Contractor shall at all times remain wholly responsible for the means, methods, procedures and scheduling of the construction of the Tunnel, including the Undercrossing, and the consequences thereof. The participation of the IRP in the Project, including but not limited to changes to Contract requirements, drawings, plans, and specifications recommended by the IRP (if approved by the Engineer) shall not relieve Contractor of any obligation, duty, responsibility, or liability under the Contract or imposed by law.

- G. Additional Costs. Contractor shall bear any additional costs incurred in implementing recommendations of the IRP to mitigate, prevent, avoid, or limit settlement of ground or improvements along the Project alignment in accordance with Contract Specifications. Said additional costs may be compensable only if Contractor can establish and the SFMTA agrees that the settlement that is due to changed Site conditions or Site conditions not described in the Contract Documents and that Contractor could not have reasonably anticipated said conditions at the time it submitted its Bid.
- H. Liquidated Damages.
1. BART Facilities. As described in Section A.3, above, if the BART Facilities are damaged or are otherwise rendered unusable or unavailable for public transit arising from or otherwise due to Contractor's negligent performance of the Work, BART and the public will incur substantial and significant damages that would be extremely difficult if not impossible to calculate at the Effective Date of the Contract. Said damages would arise from a number of factors, including but not limited to the public's loss of use of the BART Facilities, the loss of BART's goodwill and loss of public trust in BART, loss of fare revenues, rerouting and rescheduling of trains and personnel, impacts on BART service, loss of passenger carrying capacity, and additional staff time and administrative costs required to conduct outreach and communication to the public and coordinate possible alternative transit services to be provided BART patrons. Said liquidated damages are intended to address the temporary loss of use of the BART Facilities and any incidental, consequential or special damages to BART arising from that loss of use, but said liquidated damages do not include any actual costs to BART to repair or replace the BART Facilities or portions thereof arising from Contractor's negligent performance of the Work.
 2. BART Schedule of Liquidated Damages. Contractor shall pay to BART the following amounts of liquidated damages if the BART Facilities are damaged or are otherwise rendered unusable or unavailable for public transit arising from or otherwise due to Contractor's negligent performance of the Work during the times noted below:
 - a. Weekday Peak (7:00 to 10:00 AM and 4:00 to 7:00 PM, Monday to Friday): \$60,000 per hour, assessed in 15 minute intervals.
 - b. Weekday Off-peak (5:00 to 7:00 AM and 10:00 AM to 4:00 PM, Monday to Friday): \$20,000 per hour, assessed in 15 minute intervals.
 - c. Weekday Nights (7:01 PM to 4:59 AM, Monday to Friday): \$5,000 per hour, assessed in 15 minute intervals.
 - d. Saturday before 9:00 AM and after 7:01 PM: \$5,000 per hour, assessed in 15 minute intervals.
 - e. Saturday 9:00 AM to 7:00 PM: \$15,000 per hour, assessed in 15 minute intervals.
 - f. Sunday (all day): \$5,000 per hour, assessed in 15 minute intervals.

- I. Contractor's Costs. Costs incurred by Contractor in performing the duties and tasks described in this Special Provision 23 shall be incidental to the Work (Incidental Work).

SP-24 TWO TUNNEL BORING MACHINES ^{ADD. 6}

- A. The design and schedule of the Project contemplates the use of the two Tunnel Boring Machines, one for each of the tunnels. A Proposal to utilize fewer than two TBMs shall be determined nonresponsive.

SP-25 BART AS INDEMNIFIED PARTY ^{ADD. 6}

- A. General Provision section 3.24 is amended as follows: Contractor shall add the Bay Area Rapid Transit District as a party to be indemnified as provided in General Provision section 3.24.

SP-26 LICENSES TO ENTER PRIVATE PROPERTY ^{ADD. 6}

- A. As provided in the Contract Documents, Contractor shall obtain permission by license agreement to enter, inspect, and place, maintain, repair and remove monitoring equipment, and place maintain, repair and remove any equipment necessary for the support or preservation of the property on private properties adjacent to the alignment that may be affected by the Work, and make any repairs to property damaged by the Work.
- B. The Engineer shall provide Contractor with a list of properties and property owners to be contacted to obtain a license for the purposes described in the above paragraph. Contractor shall not commence contact or negotiations with said property owners unless and until directed by the Engineer in writing. When the Engineer provides written authority to the Contractor to contact the property owners, Contractor shall expeditiously work to obtain the required license agreements from the identified property owners unless and until the Engineer directs the Contractor to do otherwise. Contractor shall promptly inform the Engineer if it is unable to obtain a license from an identified property owner, and in such cases, follow the directions of the Engineer as to next steps.
- C. The parties and signatories to said license agreements shall be the Contractor and the respective property owner or authorized agent of the property owner. Contractor shall negotiate and obtain said license agreements on behalf of and for the benefit of the City. The City shall be a named third party beneficiary to each license agreement, with full authority to enforce the license agreement. Each license agreement shall be assignable, and Contractor shall if directed by the Engineer assign the license agreement (or all or any number of the license agreements) to the City or to any corporate or political entity identified by the City.
- D. Contractor shall use only the form license agreement provided by the Engineer.

- E. Contractor shall to the maximum extent possible establish and maintain a positive relationship with the aforesaid property owners (and their tenants). Contractor shall promptly advise the Engineer of any complaints it receives from said property owners and tenants concerning the Work and the impacts of the Work. As authorized by the Engineer, the Contractor shall meet with individual property owner(s) to discuss the means and methods of constructing the Work and protecting the properties that may be impacted by the Work. Contractor is not expected and shall not under this Contract act as a design consultant to any property owner, but shall confer and cooperate with any property owner or engineer or architect retained by a property owner as to appropriate means and methods of protecting said property. Contractor shall not enter into any contract with a property owner that may be impacted by the Work to perform preventative or remedial work, or correct or repair damage to said property caused by the Work, without the express written permission of the Engineer.
- F. The work and tasks described in this Special Provision and in related provisions of the Contract Documents are Incidental Work.

END OF SPECIAL PROVISIONS

EXHIBIT “A”

LEGAL DESCRIPTION

For Appraisal Purposes Only – Not For Conveyance
For a portion of Assessor’s Block 0130, Lot 001

All that certain real property situate in the City and County of San Francisco, State of California, being a vertical portion of a parcel of land, said parcel being a portion of the land described as Parcel Four in that deed recorded on April 16, 1993 in Reel F859 at Image 0371, Official Records of the Assessor-Recorder of the City and County of San Francisco, the upper elevation being defined by a plane of 52.20 feet, City of San Francisco Datum (intended to be 30.00 feet below existing ground surface) and the lower elevation defined by the center of the earth, said property more particularly described as follows:

Beginning at the intersection of the westerly line of Stockton Street with the southerly line of Green Street;
thence westerly 20.41 feet along last said southerly line;
thence southeasterly 73.86 feet to the most southeasterly corner of said Parcel Four, also being a point on said westerly line of Stockton Street;
thence northerly 70.98 feet along last said westerly line to the point of beginning.

Being a portion of 50 Vara Block No. 130
APN: 0130-001

Exhibit “B” is attached hereto and made a part hereof.

EXHIBIT “A”

LEGAL DESCRIPTION

For Appraisal Purposes Only – Not For Conveyance
For a portion of Assessor’s Block 0328, Lot 002

All that certain real property situate in the City and County of San Francisco, State of California, being a vertical portion of a parcel of land, said parcel being a portion of that parcel of land described in that deed recorded on January 25, 2000 in Reel H559 at Image 553, Official Records of the Assessor-Recorder of the City and County of San Francisco, the upper elevation being defined by a plane of -30.50 feet, City of San Francisco Datum (intended to be 60.00 feet below existing ground surface) and the lower elevation defined by the center of the earth, said property more particularly described as follows:

Beginning at the intersection of the easterly line of Stockton Street with the northerly line of Ellis Street;
thence easterly 18.63 feet along last said northerly line to the northwesterly line of Market Street;
thence northeasterly 30.96 feet along last said line;
thence northwesterly 62.43 feet along a line having a deflection angle to the left of 76°34’09”;
thence northwesterly 89.26 feet along a line having a deflection angle to the right of 9°22’18” to the northwesterly corner of said parcel as described in above said deed;
thence southerly 162.83 feet along said easterly line of Stockton Street to the point of beginning.

Being a portion of 50 Vara Block No. 122
APN: 0328-002

Exhibit “B” is attached hereto and made a part hereof.

EXHIBIT “A”

LEGAL DESCRIPTION

For Appraisal Purposes Only – Not For Conveyance
For a portion of Assessor’s Block 3705, Lot 048

All that certain real property situate in the City and County of San Francisco, State of California, being a vertical portion of a parcel of land, said parcel being a portion of that certain parcel of land as shown on the Parcel Map recorded on June 18, 1992 in Book 41 of Parcel Maps at Pages 44 and 45, Official Records of the Assessor-Recorder of the City and County of San Francisco, the upper elevation being defined by a plane of -30.70 feet, City of San Francisco Datum (intended to be 60.00 feet below existing ground surface) and the lower elevation defined by the center of the earth, said property more particularly described as follows:

Beginning at the intersection of the southwesterly line of Fourth Street with the southeasterly line of Market Street;
thence southeasterly 100.79 feet along said southwesterly line of Fourth Street;
thence northwesterly 101.91 feet along a line having a deflection angle to the right of 171°29’46”, to a point on the said southeasterly line of Market Street;
thence northeasterly 15.07 feet along said southeasterly line of Market Street, said line having a deflection angle to the right of 98°30’14”, to the point of beginning.

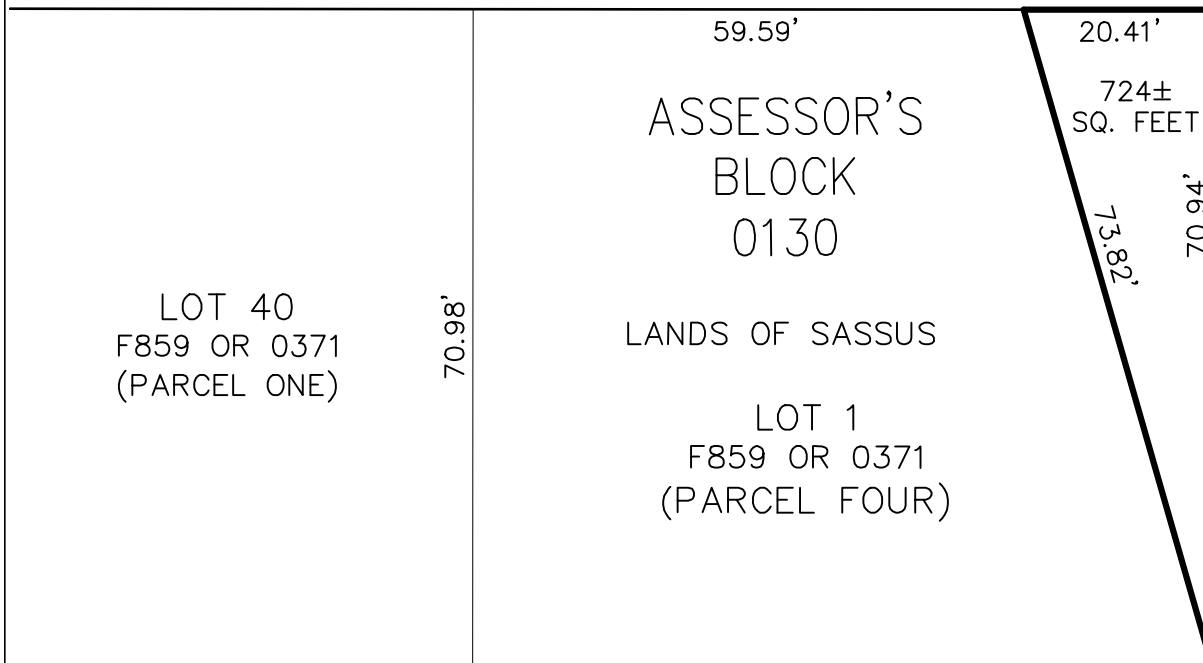
Being a portion of 100 Vara Block No. 371

APN: 3705-048 (also known as 3705Z, Lots 1-4, for tax purposes only)

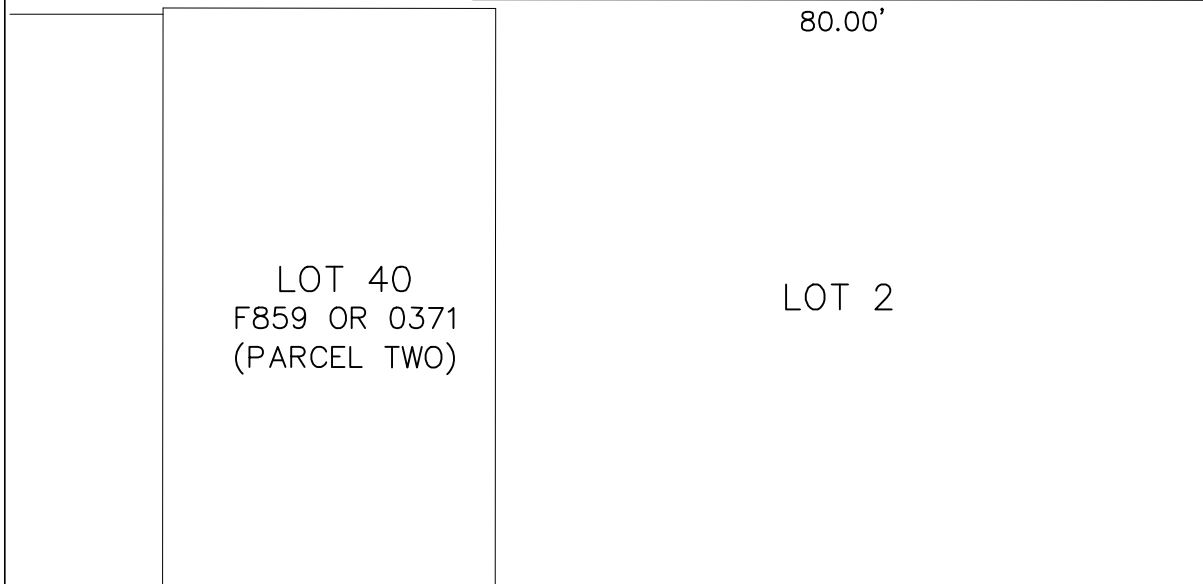
Exhibit “B” is attached hereto and made a part hereof.

GREEN STREET (68' WIDE)

POB



STOCKTON STREET (67.96' WIDE)

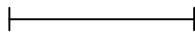


CARD ALLEY

LEGEND

NOTE

1:20



SCALE



BOUNDARY LINE



ROW

POB

POINT OF BEGINNING

THIS PLAT FOR APPRAISAL
PURPOSES ONLY — NOT
FOR CONVEYANCE.

CITY AND COUNTY OF SAN FRANCISCO,
STATE OF CALIFORNIA

DEPARTMENT OF PUBLIC WORKS
BUREAU OF STREET USE AND MAPPING
DIVISION OF SURVEYS
PHONE: 415.554.5827
FAX: 415.554.5324



EXHIBIT 'B'
MUNICIPAL TRANSPORTATION AUTH
CENTRAL SUBWAY TAKE PARCEL
AB 0130 LOT 001

MAY 2009

STOCKTON STREET (65.81' WIDE)

LOT 4

LOT 3

ASSESSOR'S
BLOCK 0328
LOT 002

LANDS OF STOCKTON ST.
PROPERTIES INC.
H559 OR 533

LOT 1

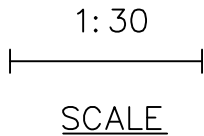


UE = -30.50'
LE = CENTER OF EARTH

POB

ELLIS STREET

MARKET STREET
(119.25' WIDE PER D-G-13)



LEGEND

- EASEMENT BOUNDARY LINE
- LOT LINE
- BOUNDARY LINE
- POB - POINT OF BEGINNING
- (R1) - REFERENCE TO DEED H559 OR 533
- UE - UPPER ELEVATION
- LE - LOWER ELEVATION

NOTE

THIS PLAT FOR APPRAISAL PURPOSES ONLY - NOT FOR CONVEYANCE.

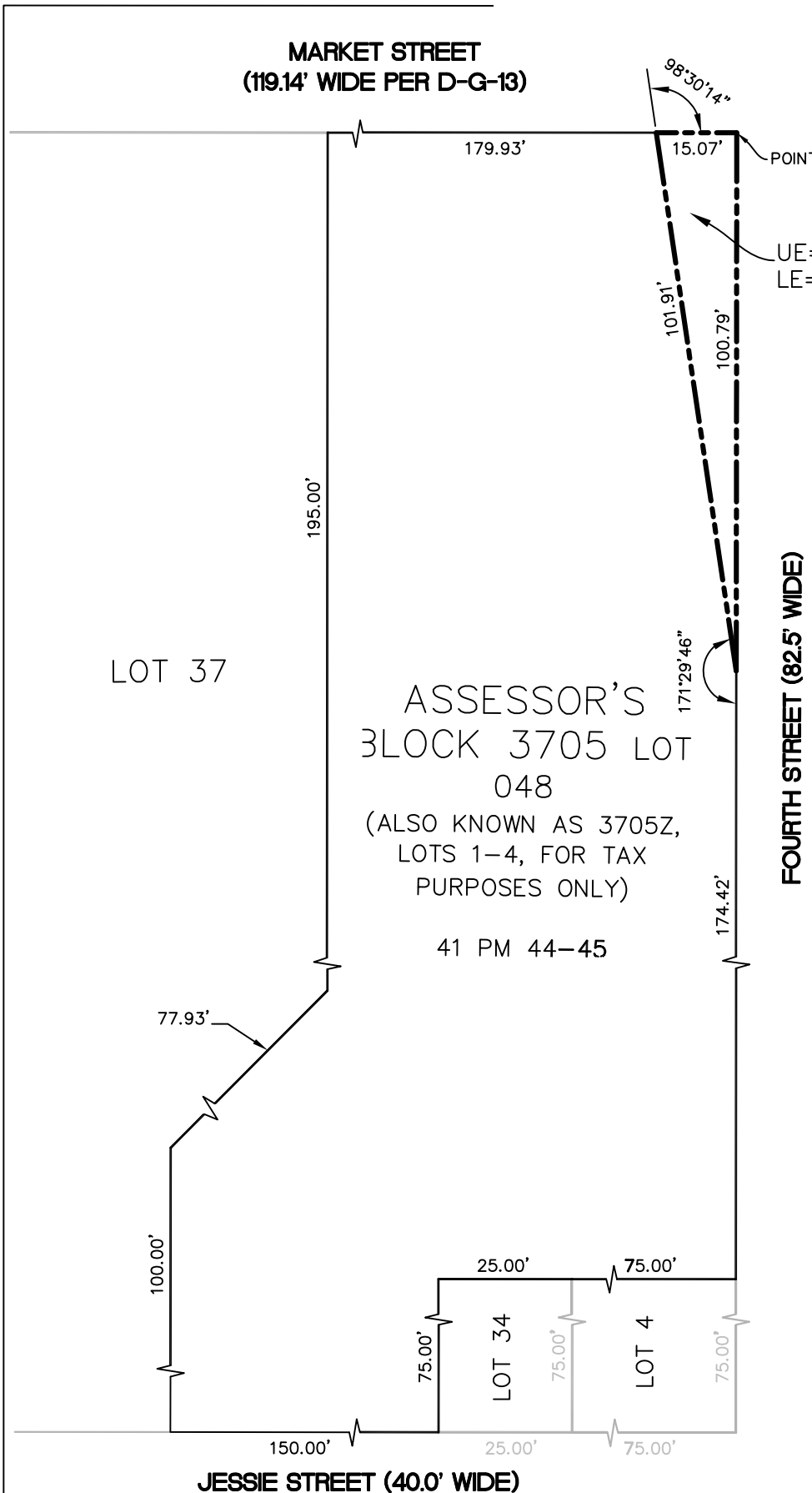
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EXHIBIT 'B'
MUNICIPAL TRANSPORTATION AUTHORITY
CENTRAL SUBWAY EASEMENT PARCEL
AB 0328 LOT 002

MAY 2009



LEGEND

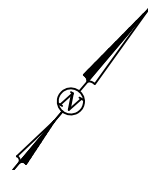
- EASEMENT BOUNDARY LINE
- LOT LINE
- BOUNDARY LINE
- UE - UPPER ELEVATION
- LE - LOWER ELEVATION

NOTE

THIS PLAT FOR APPRAISAL PURPOSES ONLY - NOT FOR CONVEYANCE.

1:30

SCALE



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EXHIBIT 'B'

MUNICIPAL TRANSPORTATION AUTHORITY
CENTRAL SUBWAY EASEMENT PARCEL
AB 3705 LOT 048

MAY 2009