

EXHIBIT “B”
PRIME CONTRACT PROVISIONS IDENTIFIED FOR INCORPORATION BY
SPECIFIC REFERENCE

Notwithstanding Subcontractor’s obligation to comply with all Prime Contract requirements as stated previously in this Contract, the following are a selection of Prime Contract clauses included here in an effort to raise Subcontractor’s awareness of special requirements, or because the Prime Contract requires incorporation of the clauses into the Subcontract.

Section 7.3 of the Prime Contract requires that each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents, and shall include provisions addressing the following requirements as well as any other terms that are specifically required by the Contract Documents to be included therein:

- (a) Each Subcontract shall include terms that are substantially similar to those terms required by Sections 5.1, 5.2, 5.3, 5.4, 7.1, 7.2, 7.3.1, 7.4.3, 10.1, 12.7, 13, 14, 18, 19.3 and 22.6 and Exhibits D, E, and F, specifically including an agreement by the Subcontractor to be joined in any dispute resolution proceeding pursuant to Section 18 if such joinder is determined by Port to be reasonably necessary to resolve the Dispute; and
- (b) Each Subcontract other than Subcontracts with Suppliers shall include terms that are substantially similar to those contained in Sections 2.2(e), 2.2(f), 2.2(h), 2.3.1, 20.3, 21.2 (as appropriate), 21.3 and 21.4.

Pursuant to Part (a) of Section 7.3: Sections 5.1, 5.2, 5.3, 5.4, 7.1, 7.2, 7.3.1, 7.4.3, 10.1, 12.7, 13, 14, 18, 19.3 and 22.6 of the Prime Contract:

5. CONTROL OF WORK

5.1 Control and Coordination of Work

Subcontractor shall be solely responsible for and have control over the construction means, methods, techniques, sequences, procedures, public safety and safety of its Work, and shall be solely responsible for coordinating all portions of the Work under the Agreement, subject, however, to all requirements contained in the Contract as applicable to Subcontractor’s Work.

5.2 Safety

Subcontractor shall take all reasonable precautions to prevent damage, injury, or loss to, all persons who would reasonably be expected to be affected by the Subcontractor’s Work, including individuals performing Subcontractor’s Work, employees of the Owner and its consultants, visitors to the Site, traffic and members of the public who may be affected by the Subcontractor’s Work. Subcontractor shall at all times comply with the Safety Management

Plan. Subcontractor shall immediately notify Contractor if Subcontractor believes that any Contract requirement creates an undue safety risk or condition that cannot be reasonably planned for and for which adequate precautions cannot be implemented, provided that by so doing, Subcontractor is not relieved of responsibility for safety of its Work. Should the Owner or Contractor notify Subcontractor of a perceived safety hazard, or lack of adequate warning devices and protective measures, that notification shall not relieve Subcontractor from its public safety obligations. Subcontractor's conformance with the Safety Management Plan or any other safety provisions in this Contract shall not relieve Subcontractor of its responsibility for safety of its Work.

5.3 Process to be Followed for Discovery of Certain Site Conditions

5.3.1 Discovery of Certain Site Conditions

If Subcontractor becomes aware of (a) any on-Site material that Subcontractor believes may contain Contaminated Materials that is required to be removed or treated, (b) any paleontological, cultural or biological resources, or (c) any Differing Site Conditions, as a condition precedent to Subcontractor's right to a Change Order, Subcontractor shall immediately notify Contractor via telephone or in person, to be followed within one Working Day by written notification. In such event, Subcontractor shall immediately stop its Work in the affected area and secure the affected area pending receipt of direction from the Contractor. The Contractor or the Owner will view the location within two Working Days of receipt of such written notification and will notify the Subcontractor at that time whether it may resume its Work in the affected area or whether further investigation by Subcontractor is required, which further investigation Subcontractor shall promptly perform.

5.3.2 Identified Conditions; Alternative Procedure

Notwithstanding the foregoing and any Contract Document requirements requiring specific actions by Subcontractor, Subcontractor shall not be obligated to notify the Contractor or the Owner or stop Work upon discovery of any materials, resources, species or conditions which the Contract Documents indicate are present in the vicinity of the location in question. Furthermore, if any Governmental Approval specifies a procedure to be followed which differs from the procedure set forth herein, Subcontractor shall follow the procedure set forth in the Governmental Approval.

5.3.3 Written Action Plan and Mitigation Work

If Differing Site Conditions are discovered, Subcontractor shall advise the Contractor within one Working Day after the initial written notification to the Contractor required in Section 5.3.1, of any action recommended to be taken regarding the situation in a written action plan. Upon Subcontractor's written request, the Contractor or the Owner may in its reasonable discretion agree to a longer period of time for Subcontractor to submit this written action plan, provided that this additional time shall not be considered an Owner- or Contractor-Caused Delay or

otherwise count toward any claim based on Delay. Within five Working Days of the Contractor's receipt of the written action plan, the Owner or the Contractor will determine whether Subcontractor's findings and proposed actions are acceptable and either Approve, or require modification of, Subcontractor's proposed action plan.

If Contaminated Materials are involved, Subcontractor shall comply with the requirements in Book 2, Section 4.

If paleontological, cultural or biological resources are present, the Owner will either perform the necessary mitigation work or direct Subcontractor to perform the necessary mitigation work pursuant to a Change Order issued under Section 12.

5.3.4 Recommence Work

5.3.4.1 Port Requirement to Recommence Work in the Area

The Owner or Contractor shall have the right at any time to require Subcontractor to recommence the Subcontractor's Work in the area of a discovery described in Section 5.3.1, provided that such Work is not in violation of any Laws or Governmental Approvals, and would not jeopardize the health and safety of Subcontractor's employees. Subcontractor shall promptly recommence its Work in the area upon receipt of notification from the Contractor to do so. On recommencing Work, Subcontractor shall follow all applicable procedures contained in the Contract Documents and all other Laws with respect to such Work, consistent with the Contractor's or Owner's determination or preliminary determination regarding the nature of the material, resources, species or condition. If the Owner or the Contractor directs Subcontractor to recommence the Subcontractor's Work in the area, Subcontractor shall not forfeit any right it has under Section 12 to submit a Request for Change Order.

5.3.4.2 Design-Builder Right to Delay Recommencement of Work

Notwithstanding Section 5.3.4.1, Subcontractor may choose to delay its recommencement of Work in the area of a Differing Site Condition despite receipt of the notice from the Contractor or Owner described in Section 5.3.4.1, but in making this choice would forfeit its right to any relief due to the delay caused in whole or in part by its decision not to recommence the Work.

5.3.5 Public Contract Code Section 7104

Subcontractor acknowledges and agrees that as a result of its agreement to undertake the risk of and responsibility for differences in Site conditions from those which may have been anticipated by Subcontractor and except to the extent that a Change Order is allowed under Sections 12.5.1(b) and (d), 12.5.2 (c) and (i), 12.8 and 12.9, information regarding Site conditions included in the Contract Documents and RID (including any information, reports, or studies about Site conditions, geotechnical conditions, Utilities or structure and bridge design, and any interpretations, extrapolations, analyses and recommendations contained therein) shall not be

considered “indicated” therein as such term is used in Public Contract Code section 7104. To the maximum extent permitted by law, Subcontractor knowingly, unconditionally, irrevocably and specifically waives each and every right and benefit of Public Contract Code section 7104 to the extent that it may be inconsistent with any provision of the Contract Documents, including the provisions set forth in Sections 12.5.1(b) and (d), 12.5.2 (c) and (i), 12.8 and 12.9. Subcontractor acknowledges and agrees that this waiver and the risk allocations set forth in the Contract Documents are material consideration for the Contractor to enter into the Agreement with Subcontractor.

5.4 Obligation to Minimize Impacts

Subcontractor shall ensure that all of its activities and the activities of all Subcontractor-Related Entities are undertaken in a manner that will minimize the effect on surrounding property and the public to the maximum extent practicable. Subcontractor and all Subcontractor-Related Entities shall perform the Work while taking all reasonable precautions to minimize obstruction and inconvenience to the public and shall have under construction no greater amount of the Work than can be prosecuted properly with due regard to the rights of the public.

7. EQUAL EMPLOYMENT OPPORTUNITY; SUBCONTRACTS; LABOR

(See Articles 3.3.3, 3.3.12.3, 3.3.24.1 of the Agreement)

10.1 Site Security

Subcontractor shall provide appropriate security for its Work, including securing any buildings from entry, and shall take all reasonable precautions and provide protection to prevent damage, injury or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at the Site, whether owned by Subcontractor, the Contractor, the Owner, or any other Person. Subcontractor shall at all times keep its Work in a neat and clean condition, including performing litter removal, removal of graffiti and weed control.

12.7 Time and Materials Change Orders

(See Article 1.6.11 of the Agreement.)

13. SUSPENSION OF WORK

(See Article 4.4.1 of the Agreement)

14. TERMINATION FOR CONVENIENCE

(See Article 4.4.2 of the Agreement)

18. PARTNERING, CLAIMS FOR ADJUSTMENT AND DISPUTES

(See Article 5.2 of the Agreement)

19.3 Opening the Project to Traffic

19.3.1 Plan for Opening to Traffic

The Contract Schedule shall set forth Contractor's plan for opening the Project to traffic. If Subcontractor is delinquent in completing shoulders, drainage structures or other features of its Work, the Owner or Contractor may, but is not obligated to, order all or a portion of the Project opened to traffic notwithstanding such incomplete elements. Subcontractor shall then conduct the remainder of the construction operations, minimizing obstruction to traffic. Subcontractor shall not receive any added compensation due to the added costs attributable to the opening of the Project to traffic.

19.3.2 No Waiver

Opening the Project to traffic prior to Final Acceptance does not constitute Acceptance of the Subcontractor's Work or a waiver of any provisions of the Contract Documents.

22.6 Officials Not to Benefit

Without prior written consent of Contractor or the Owner, Subcontractor shall not employ any professional or technical personnel to provide services under the Contract who are or have been at any time during the time period of the Contract in the employ of the City of Long Beach, including the Owner, or the State, including Department, unless such individuals (i) have been retired from the City of Long Beach or the State for at least two years and (ii) did not work on the Project, including pre-development or procurement-related activities.

Part (b): Sections 2.2(e), 2.2(f), 2.2(h), 2.3.1, 20.3, 21.2 (as appropriate), 21.3 and 21.4.

2.2 General Obligations of Design-Builder

Subcontractor, in addition to performing all other requirements of the Contract Documents, shall:

- (e) provide such assistance as is reasonably requested by the Owner or the Contractor in dealing with any Person and/or in prosecuting and defending lawsuits in any and all matters relating to the Project, which may include providing information and reports regarding the Project, executing declarations and attending meetings and hearings, but which shall in no event be deemed to require the Contractor or the Owner to provide legal services;
- (f) comply with the Quality Manual requirements in Book 2, Section 2.4;

- (h) supervise and be responsible to the Owner and the Contractor for acts and omissions of all Subcontractor and all such persons or entities were directly employed by Subcontractor;

2.3.1 Maintenance of Professional Qualifications

Subcontractor and its design lower-tier subcontractor(s) have maintained, and throughout the term of the Contract and its design subcontract(s) shall maintain, all required authority, license status, professional ability, skills and capacity to perform its Work, and shall perform them in accordance with the requirements of the Contract Documents.

20.3 Subcontractor and Supplier Warranties

20.3.1 Assignment

Subcontractor represents, warrants, and guarantees all obligations required by Subcontractor and its lower tier subcontractors and suppliers under Book 2. All representations, warranties, guarantees and obligations of Subcontractor and its lower tier subcontractors and suppliers (a) shall be written so as to survive all Owner and Contractor inspections, tests and approvals, (b) shall run directly to and be enforceable by Subcontractor, Contractor and/or the Owner and their respective successors and assigns, and (c) shall be assignable by the Owner to Department. Subcontractor hereby assigns to Contractor and the Owner all of Subcontractor's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by Subcontractor from any of its subcontractors and suppliers.

20.3.2 Enforcement

Upon Subcontractor's receipt of a notice from the Contractor or the Owner regarding a failure of any of its Work to satisfy any Subcontractor warranty, representation, guarantee, or obligation, Subcontractor shall enforce or perform any such representation, warranty, guarantee or obligation, in addition to Subcontractor's other obligations hereunder. The Contractor's and the Owner's rights under this Section 20.3.2 shall commence at the time such representation, warranty, guarantee or obligation is furnished, and shall continue until the expiration of Subcontractor's relevant Warranty (including extensions thereof under Section 20.2). Until such expiration, Subcontractor shall be responsible for the cost of any equipment, material, labor (including re-engineering) or shipping, and Subcontractor shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractor or its lower tier subcontractor or suppliers.

21.2 Subcontractor and Supplier Pricing Documents

Each Subcontractor and its lower tier subcontractors or suppliers of a subcontract over \$500,000 shall submit to Contractor a copy of all documentary information used in determining its price, immediately prior to executing the lower-tier subcontract or change orders or amendments thereto, to be held in the same manner as the EPDs and which shall be accessible by the

Subcontractor, the Contractor, the Owner, and those participating in the partnering and dispute resolution process described in Article 5.2 of the Agreement, on terms substantially similar to those contained herein. Subcontractor and its lower tier subcontractors and suppliers represent and warrant that its EPDs constitute all the documentary information used in establishing its price. Each Subcontract, including lower-tier subcontracts and subcontracts with suppliers that are not subject to the foregoing requirement shall preserve all documentary information used in establishing its price and to provide such documentation to the Contractor in connection with any claim made by such Subcontract, including lower-tier subcontracts and subcontracts with suppliers.

21.3 Project Records

21.3.1 Maintenance of Records

Except for EPDs, which shall be maintained as set forth in Section 21.1, the Subcontractor shall maintain at Subcontractor's office a complete set of all books, records and documents (in electronic or hard copy files, as applicable) in accordance with applicable provisions of the Contract Documents and the Project Management Plan.

21.3.2 Audit and Inspection Rights

Subcontractor grants to the Contractor, the Owner, Department, FHWA, and the U.S. Comptroller General, and their respective authorized representatives, such audit and inspection rights and allows such Persons such access to and the right to copy such books and records (including all tax returns and supporting documentation filed with any Governmental Persons) as such Persons may request from time to time in connection with the issuance of Change Orders, the resolution of Disputes, and such other matters as such Persons reasonably deem necessary for purposes of complying or verifying compliance with the Contract and Laws. The right of inspection includes the right to make extracts and take notes.

21.3.3 Audit of Time and Materials Work

Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates Subcontractor has been overcredited under a previous progress report or progress payment, that overcredit will be credited against current progress reports or payments.

21.3.4 Change Order Pricing Data

For cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation,

such Persons and their representatives have the right to examine all books, records, documents and other data of Subcontractor related to the negotiation of or performance of its Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

21.3.5 Port Reviews and Audits for Compliance

The Owner and the Contractor shall have such rights to review and audit Subcontractor, its subcontractors, of any tier, and their respective books and records as and when the Owner or the Contractor deems necessary for purposes of verifying compliance with the Contract Documents, the Governmental Approvals and applicable Laws. The Owner or the Contractor may conduct any such audit of books and records upon 48 hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud.

21.3.6 Claim or Dispute Audits

All Claims or Disputes filed against the Contractor or the Owner shall be subject to audit at any time following the filing of the Claim or Dispute. The audit may be performed by employees of the Owner or the Contractor or by an auditor under contract with the Contractor or the Owner. No notice is required before commencing any audit before 60 Days after Final Acceptance. Thereafter, the Owner or the Contractor shall provide 20 Days notice to Subcontractor, any of its lower tier subcontractors or their respective agents before commencing an audit. Subcontractor or any of its lower-tier subcontractors or their agents shall provide adequate facilities, acceptable to the Contractor or the Owner, for the audit during normal business hours. Subcontractor, its subcontractors of any tier and their agents shall cooperate with the auditors. Failure of Subcontractor or its subcontractors at any tier or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or Dispute or to permit the auditors access to the books and records of Subcontractor, its subcontractors or their agents shall constitute a waiver of the Claim or Dispute and shall bar any recovery thereunder.

At a minimum, the auditors shall have available to them the following documents:

- (a) Daily time sheets and supervisor's daily reports;
- (b) Union agreements;
- (c) Insurance, welfare and benefits records;
- (d) Payroll registers;
- (e) Earnings records;
- (f) Payroll tax forms;

- (g) Material invoices and requisitions;
- (h) Material cost distribution worksheet;
- (i) Equipment records (list of company equipment, rates, etc.);
- (j) Subcontractors' (including Suppliers) and agents' invoices;
- (k) Subcontractors' and agents' payment certificates;
- (l) Canceled checks (payroll and Suppliers);
- (m) Job cost report;
- (n) Job payroll ledger;
- (o) General ledger;
- (p) Cash disbursements journal;
- (q) Contract Schedules or other Project-related schedules;
- (r) e-mail, letters and correspondence;
- (s) network servers, data storage devices, backup media;
- (t) All documents that relate to each and every Claim or Dispute together with all documents that support the amount of damages as to each Claim or Dispute; and
- (u) Work sheets used to prepare the Claim or Dispute establishing the cost components for items of the Claim or Dispute including labor, benefits and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals and the rates for the individuals.

21.3.7 Compliance by Design-Builder and Subcontractors

Full compliance by Subcontractor with the provisions of Section 21.3.6 is a contractual condition precedent to Subcontractor's right to seek relief under Article 5 of the Agreement. Subcontractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 21.3 and shall cause all of its subcontractors of any tier to warrant the completeness and accuracy of all information such subcontractors or their agents provide in connection with this Section 21.3. Subcontractor's internal and third party quality and compliance auditing responsibilities shall be set forth in its Project Management Plan.

21.3.8 FHWA Review and Audit Rights

In addition to FHWA's rights set forth in this Section 21.3, FHWA shall have the right to review and audit Subcontractors books and records as provided in Exhibit F.

21.4 Retention of Records

Subcontractor shall maintain all records and documents relating to the Contract (including copies of all original documents delivered to the Contractor) until seven years after the earlier to occur of (a) the date Final Acceptance is achieved or (b) the termination date. Subcontractor shall notify the Contractor where such records and documents are kept.

Notwithstanding the foregoing, all records which relate to Claims being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Claims have been finally resolved. Records to be retained include all books, electronic information and files and other evidence bearing on Subcontractor's costs and expenses under the Contract Documents. Subcontractor shall make these records and documents available for audit and inspection to the Owner and the Contractor, at Subcontractor's office, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents (at no expense to Subcontractor). If approved by the Owner, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.