

MAJOR MAINTENANCE AGREEMENT

BY AND BETWEEN

CITY OF ANAHEIM AND

ABM ONSITE SERVICES-WEST, INC

FOR THE

ANAHEIM REGIONAL TRANSPORTATION INTERMODAL CENTER (ARTIC)

EXHIBITS AND SCHEDULES

Page No.

EXHIBIT A	LEGAL DESCRIPTION OF THE ARTIC SITE.....	41
EXHIBIT B	ARTIC SITE PLAN/DESCRIPTION OF THE ARTIC SITE.....	42
EXHIBIT C	INCLUDED PERSONAL PROPERTY OF CITY.....	45
SCHEDULE 1	TRANSITION AND MOBILIZATION PLAN.....	46
SCHEDULE 2	STAFFING PLAN AND OFFICE SPACE REQUIREMENTS	48
SCHEDULE 3	FEE STRUCTURE.....	51
SCHEDULE 4	PERFORMANCE SPECIFICATIONS	52
SCHEDULE 5	KEY PERFORMANCE INDICATORS.....	60
SCHEDULE 6	DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS.....	62
SCHEDULE 7	PROPERTY AGREEMENTS.....	68
SCHEDULE 8	BUDGET PROCESS.....	71
SCHEDULE 9	CITY-APPROVED COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM.....	72
SCHEDULE 10	CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS.....	73
SCHEDULE 11	CONTRACTOR’S REPORTING REQUIREMENTS.....	74
SCHEDULE 12	FEDERAL REQUIREMENTS.....	84

MAJOR MAINTENANCE AGREEMENT

This **MAJOR MAINTENANCE AGREEMENT** (“Agreement”), dated as of _____, 2014, is entered into by and between the CITY OF ANAHEIM, a California municipal corporation, (“City”) and **ABM ONSITE SERVICES-WEST, INC.**, a Delaware corporation (“Contractor”).

RECITALS

A. City owns certain property legally described in Exhibit A, which is attached hereto and incorporated herein (“ARTIC Site” or “ARTIC”). The ARTIC Site consists of a 19.66 acre site that includes a facility known as the “ARTIC Facility,” generally located at 2626 East Katella Avenue in the City of Anaheim, California.

B. The ARTIC Site consists of four general areas: the ARTIC Facility, Front Plaza, Parking Areas and Retail Platforms, which are described in more detail in Exhibit B. An ARTIC Site Plan is also included in Exhibit B.

C. City desires to engage Contractor to provide Major Maintenance services to ensure ARTIC is operated and maintained at a level consistent with other world class venues in the City of Anaheim on the terms and conditions set forth in this Agreement.

D. Contractor desires to accept the engagement as defined in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. Initially capitalized terms used herein shall have the meanings set forth in this Section 1.1 or where first defined in the text.

"Advertising Structures" shall mean freestanding structures of any kind erected, used, or maintained for advertising purposes located inside or outside the ARTIC Facility, upon which any Digital “Affiliate” shall mean any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Contractor, which shall include each of the constituent members of Contractor’s [limited liability company][update type of entity]. The term “control,” as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to exercise, directly or indirectly, at least 50% of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person, LED or Static advertisement message may be placed.

"Agreement" means this Major Maintenance Agreement.

"Amtrak" means the National Railroad Passenger Corporation, which operates passenger trains that will stop at ARTIC.

"Approved Operating Budget" is defined in Section 7.1 "ARTIC Facility" is defined in Recital A above.

"ARTIC Operating Account" means that operating reserve account which the City will from time to time, upon request by ARTIC Property Manager, fund in an amount equal to three months' operating expenses, as set forth in the Manager's Approved Operating Budget or such other amount as directed by the City for the purpose of expeditious and timely resolution of invoices attributable to the operation of the ARTIC Facility.

"Breach(ing)" means a failure or delay by either to perform any material term or provision of this Agreement.

"Business Day(s)" means Monday through Friday, excluding state and federal holidays during which the City is closed. "Commencement Date" is defined in Section 2.2.

"Contractor" means the Major Maintenance Services provider.

"Contractor Reports" is described in Section 4.1 and defined in Schedule 11.

"Construction Contractor" means Clark Construction Group. "Construction Manager" means the STV Group, Inc.

"CPRA" is defined in Section 14.6.

"Davis Bacon" is defined in Section 14.4.

"Default" or "Defaulting" is defined in Section 2.6.

"Environmental Laws" shall mean all laws, ordinances and regulations relating to Hazardous Materials, including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601, et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; all comparable state and local laws, laws of other

jurisdictions or orders and regulations; and all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Orange, the City, or any other political subdivision in which the ARTIC Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Contractor, or the ARTIC Site.

“Extension Term” is defined in Section 2.4.

“Governmental Requirements” means any and all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Orange, the City or any other political subdivision in which the ARTIC Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Contractor, or ARTIC, including all applicable federal, state and local occupation, safety and health laws, rules, regulations and standards, applicable federal and state and labor standards, applicable prevailing wage requirements, the City zoning and building standards, building, plumbing, mechanical and electrical codes, as they apply to ARTIC the ARTIC Site, all other ordinances and requirements of the City and its Municipal Code, and all applicable disabled and handicapped access requirements, including, without limitation, the Americans With Disability Act, 42 U.S.C. §12101, et seq., Government Code §4450, et seq., and the Unruh Civil Rights Act, Civil Code §51, et seq.

“Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the County of Orange, the Regional Water Quality Control Board, the State of California (including the Department of Toxic Substances Control), other state, regional or local governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (ix) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903) or (x) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management and/or operation of transit facilities and/or commercial/retail centers, associated buildings and grounds, or typically used in commercial retail or transportation activities in a manner typical of other comparable

developments, or substances commonly ingested by a significant population living within the County, including without limitation alcohol, aspirin, tobacco and saccharine agents.

“Indemnitees” means City and its elected and appointed officials, officers, employees, and agents.

“Leadership in Energy and Environmental Design (LEED)” means a set of rating systems for the design, construction, operation and maintenance of green buildings, homes and neighborhoods. LEED certification levels range from Certified, Silver, Gold, and Platinum.

“LEED O&M Platinum Rating” means the rating system for the operation and maintenance of green buildings that provide operational benefits throughout the life of the building.

“LEED Platinum Certification” means the highest certification level under the LEED system.

“LEED Reference Guide for Green Building Operations and Maintenance” means the most recent version of this publically available document prepared by the U.S. Green Building Council.

“Major Maintenance” means maintenance work that goes beyond the day-to-day, routine maintenance of the SITE. Major Maintenance work, by example, includes but is not limited to repair of or required maintenance to the structure, installed equipment, elevators, escalators, HVAC system, the electrical system, the plumbing system, the roofing material, the flooring material (in the event of actual damage or necessary replacement), grounds/landscaping maintenance, management of Preventive Maintenance and other work as is more fully set forth under Section 3.1 herein.

"Major Maintenance Fee" is defined in Section 10.1

“OCTA” means the Orange County Transportation Authority.

“Person” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company, corporation or body corporate with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency.

“Prevailing Wage Laws” is defined in Section 12.4.

"Preventive Maintenance" means any maintenance or other work intended to retain and improve the condition of the building, grounds/landscaping and associated systems and equipment by increasing reliability and minimizing corrective and reactive maintenance. Preventive Maintenance includes but is not limited to regular scheduled inspections, tests, servicing, repairs, and replacements, execution of manufacturers' specifications and

other tasks intended to reduce the frequency and impact of building systems and equipment failures.

"Property" is defined in Section 2.1.

"Property Agreements" is defined in Section 4.5(3).

"Property Manager" means LPC Transit Management LLC, a Delaware limited liability company.

"Regulations" is defined in Section 12.12.

"SCRRA" means the Southern California Regional Rail Authority.

"Service" and "Services" is defined in Article 3.

"Staffing Plan" refers to the City-approved Staffing Plans and Office Space Requirements attached to this Agreement in Schedule 2.

"Term" is defined in Section 2.2.

"Termination Date" is defined in Section 2.2

"Transition Plan" refers to the Transition and Mobilization Plan attached to this Agreement in Schedule 1.

"Warranty(s)" shall mean those various warranty(s) for ARTIC Facility identified in the Warranties and Detailed Equipment and System Specifications of the construction contract by and between the City and the Construction Contractor, and further defined in Section 4.5.

ARTICLE II

PROPERTY; TERM; TERMINATION

2.1 Property. The property subject to this Agreement shall consist of all of City's real property described in the Recitals above and as legally described in attached Exhibit A (the "Property").

2.2 Initial Term. Contractor's duties and responsibilities under this Agreement shall begin upon the execution of this Agreement by City ("Commencement Date") and shall continue for a period of five (5) years thereafter, unless sooner terminated or extended for one or more Extension Terms, as provided herein, the actual date of termination being the "Termination Date," and such term of effectiveness being the "Term."

2.3 Extension Term. The Term of this Agreement may be extended upon the mutual consent of the parties for up to two (2) one (1)-year extension terms (“Extension Term”). Either party may provide written notice to extend the Term of this Agreement by delivering notice to the other party thereof, delivered no earlier than one (1) year and no later than six (6) months prior to the Termination Date. City’s Public Works Director (or his or her designee) is expressly authorized to exercise the Extension Term on behalf of City.

2.4 Effect of Termination.

Upon the Termination Date:

(1) Contractor shall surrender any space in the Property occupied by Contractor and shall remove all personal property of Contractor.

(2) Contractor and Property Manager, on behalf of the City, shall account to each other for all matters outstanding with respect to this Agreement, and in furtherance of that end, Contractor shall deliver to Property Manager, on behalf of the City, the following with respect to the Property:

(a) All original records, contracts, leases, receipts for deposits, unpaid bills, and other papers or documents that pertain to the Property in Contractor’s possession, provided that any such documents located at the Property shall, unless otherwise directed by Property Manager and/or City, remain at the Property. All costs associated with delivery of such original documentation to Property Manager and/or City shall be borne by Contractor.

(b) All documents and records, including invoices and records of payment, required in order to conduct the audit permitted hereunder.

(c) If Contractor has entered into any contracts for the Property in accordance with the terms hereof, Contractor shall assign/and or deliver, as appropriate, such contracts to City, Property Manager or City’s designee and City, Property Manager or City’s designee shall assume Manager’s obligations thereunder as of the Termination Date. Notwithstanding anything to the contrary set forth in this Agreement, Contractor shall ensure that any contract relating to ARTIC entered into by Contractor shall be fully assignable to City without any consent or approval from the third party contractor and upon no more than thirty (30) days’ notice to such third party.

(d) All Reports, Plans and Manuals completed and maintained in accordance with this Agreement.

Upon any termination of this Agreement, City shall be obligated to pay to Contractor the amounts due to Contractor hereunder that accrued prior to the Termination Date. The termination of this Agreement shall not affect the rights of either party with respect to any damages it has suffered as a result of any breach of this Agreement, nor shall it affect the rights

or obligations of either party with respect to liability or claims accrued, or arising out of events occurring prior to the Termination Date, all of which shall survive such termination.

2.5 Termination Due to Unavailability of Funding. The purchase of goods or services from Contractor under this Agreement is subject to the availability and provision of funding from the United States, the State of California, or other funding sources, and the appropriation of funds by the City Council of the City. Contractor or City may immediately terminate this Agreement if the funding for the contracted goods and services is no longer available or is not appropriated by the City Council of the City. Upon receipt of City's notice of termination of the Agreement pursuant to this Section, or upon providing such notice of termination to City, Contractor shall take all reasonable action to discontinue further commitments of funds pursuant to this Agreement. Termination shall be treated as termination without cause and will not result in any penalty to City.

2.6 Termination Upon Sale. If City shall sell or transfer the Property to an unrelated third party, this Agreement shall terminate as of the date of the closing of the sale. City shall use its best efforts to give Contractor at least thirty (30) days prior written notice of any pending sale of the Property; and if the sale is consummated prior to the end of such thirty (30) day period, the compensation payable to Contractor hereunder shall continue until thirty (30) days from the date of such notice.

2.7 Termination With Cause. A Breach by either party, following notice and an opportunity to cure as described below, constitutes a Default hereunder. The party not in Breach may terminate this Agreement upon: (a) five (5) Business Days following written notice to the defaulting party in Breach in the event of a monetary Breach which is not cured within five (5) Business Days following receipt by the party in Breach of written notification of such Breach; or (b) thirty (30) days' written notice to the party in Breach in the event of a non-monetary Breach, unless the Breach is cured within said applicable time period; or in the case of a non-monetary Breach, if the nature of such Breach will not permit it to be cured within said thirty (30) day period, the party in Breach commences to cure such Breach within such thirty (30) day period and thereafter proceeds to complete the same with reasonable diligence; provided however, and notwithstanding the diligence with which such cure is being pursued, such cure must be completed on or before one hundred eighty (180) days following written notice. In the event that either party exercises its right of termination under this Section, it shall submit written notice to the other, specifying the extent of such termination under this Section, the reasons therefor, and the date upon which such termination becomes effective. Upon receipt of such notice, Contractor shall take all reasonable actions to discontinue further commitments of funds to the extent that they relate to the terminated portions of this Agreement.

2.8 Termination Without Cause. City or Contractor may terminate this Agreement without cause and for any reason whatsoever upon giving at least one hundred eighty (180) days' written notice thereof to the Contractor. In such event, Contractor shall be entitled to receive compensation for the Services provided in a satisfactory manner up to and including the effective Termination Date.

2.9 Transition Upon Termination. Ninety (90) days prior to expiration of the Term or any Extension Term thereafter, or any earlier termination of this Agreement, Contractor shall develop a Maintenance Transition Plan which demonstrates those components identified in Schedules 4 and 5 are operating in a safe and working condition. If Contractor, despite diligent efforts, is unable to meet such obligations to deliver those components in the manner identified in the Maintenance Transition Plan, then City may withhold Contractor's final two (2) payments to be made per the terms of this Agreement.

2.10 Standard of Care. Contractor acknowledges and agrees that by entering into this Agreement it accepts a fiduciary relationship of trust and confidence between Contractor and City. In performing its obligations and providing the Services set forth in this Agreement, Contractor shall exercise a standard of care, skill, diligence, knowledge, judgment and quality of Services so as to maintain the Property, to the extent funds are available under the Approved Operating Budget, in a safe and cost-effective condition and state of repair commensurate with and at a standard consistent with other world class venues in the City.

ARTICLE III

SCOPE OF SERVICES

3.1 Description of Services. Contractor shall provide all Major Maintenance Services including Preventative Maintenance Services as defined in Schedule 4 for ARTIC, as further described below in this Article and elsewhere in this Agreement, including in any of the Exhibits and Schedules. Detailed specifications describing the Scope of Services are set forth in the Performance Specifications and Key Performance Indicators and, Fee Structure and Penalties set forth in Schedules 3, 4 and 5, respectively.

3.2 General Major Maintenance Services. Contractor shall provide the Services necessary to support the Major Maintenance work-related tasks and activities of the Property, as set forth in Schedules 4 and 5 and, including but not limited to the following:

- Provide qualified, engineering staff to operate, test, and manage and maintain all property, building systems and equipment.
- Secure a qualified landscape maintenance company to 1) maintain and repair all irrigation equipment including, backflow devices, irrigation lines and irrigation timing devices per the bid specifications; 2) maintain all plant materials, turf, ground cover, shrubs, vines, annual beds, trees, palm trees; 3) provide tree trimming, pruning, surgery, and surface tree root removal; 4) amend and condition the soil; 5) water, fertilize, and aerate; 5) maintain and clean the gravel and hardscape areas; 6) replace wood chips; 7) eradicate non-native plant materials, weeds, pests, rodents, litter, debris, and graffiti, per the approved landscape plans or as may be modified by the Public Works Director or his/her designee.
- Maintain in neat, clean, and painted condition all areas within the Project Site.

- Manage the current inventory of tools and equipment.
- Oversee any special maintenance, repairs or other work to the systems and equipment performed by others.
- Develop implement, maintain and manage an ongoing and City-approved – comprehensive preventive maintenance program for all building systems and equipment.
- Monitor and evaluate the energy consumption of the Property and shall recommend additions, replacements, enhancements or modifications to existing equipment or systems in order to maximize energy efficiency.
- Assist ARTIC's Property Manager in annual operating and capital improvement budget preparation by providing, projected costs of repairs, maintenance, equipment, supplies and materials necessary to maintain proper and efficient operation of building systems and equipment.
- Maintain a daily log of activities and operations. Records will be kept of equipment documents, preventive maintenance, major repairs, energy management and projects. Contractor shall maintain records regarding any regulated programs such as asbestos maintenance, indoor air quality and refrigerant management.
- Perform or oversee any testing, inspection, registration or certification for the building equipment or systems.
- Perform or oversee periodic, routine and preventive maintenance of all property, permanent and temporary structures within the Project Site, excluding Advertising Structures.
- Assist City's Property Manager in maintaining ARTIC Facility quality standards of construction and materials. Contractor shall review drawings prior to construction or remodeling projects and shall inspect construction work at its various stages until project completion.
- Participate in commissioning activities for ARTIC Facility major building systems.

3.3. Staff Plan and Response Plan. Contractor shall prepare a staffing plan, as described in Schedule 2. The staffing plan shall assume a world class service level. Contractor shall manage any and all emergency situations and maintain emergency protocols (including staff trainings, etc.) in accordance with the Emergency Management and Response Plan described in Schedule 11. The Plan shall provide for response in case of emergency twenty-four (24) hours per day, seven (7) days per week.

3.4. Operations, Maintenance and Quality Control Program: Contractor has provided a detailed Operations, Maintenance and Quality Control Program which describes how it will perform and complete: (1) periodic inspection of all the property, building systems and equipment to ensure ongoing safety and structural integrity, (2) preventive maintenance, (3) routine maintenance, and (4) proposed methodologies to fix or repair all areas to ensure each remains safe, structurally sound, and in “like new” condition, free of rust, stains, scratches, missing paint, graffiti and in good working order throughout the term of the Agreement.

3.5 Maintain LEED O&M Platinum Certification. The ARTIC Facility is being constructed to a LEED Platinum standard and includes a number of components that will simplify the goal of obtaining and maintaining a LEED O&M Platinum rating in future. Contractor shall implement all procedures needed to maintain the LEED Platinum Certification at ARTIC.

3.6 Warranty Compliance. All building material, systems and equipment are under General Contractor warranty for a minimum of one (1) year, upon substantial completion of construction. There are additional warranty provisions for a few select systems, including the parking controls and ETFE roofing system. Such provisions are described in more detail in the Warranties and Detailed Equipment and System Specifications, which is available at the Department of Public Works upon request and incorporated herein by this reference. Contractor shall comply with terms and delivery of warranty services. Notwithstanding anything to the contrary set forth herein, Contractor shall not take any action (or fail to take any action) that would have the effect of voiding or otherwise abrogating any warranty impacting any improvements, equipment or other facility or component of ARTIC, without the prior express approval of City. Contractor shall maintain a list and copies of all warranties, maintenance and operating manuals for goods, equipment and machinery purchased or installed by Contractor or City as well as warranties delivered to Contractor by City or City’s contractor(s) and/or consultant(s) and shall use and enforce such warranties when maintaining, repairing and/or replacing any such items. Contractor shall notify City in writing in the event any warranty is accessed to maintain, repair or replace any item. Unless otherwise approved by City, the Approved Operating Budget shall not reflect the maintenance, repair or replacement cost of goods, equipment or machinery covered under a warranty and Contractor is not authorized to separately contract for services, maintenance or repairs that are covered by a warranty.

3.7 Defects. Whenever Contractor becomes aware of any defect or any maintenance activity that Contractor considers should be performed but with regards to which Contractor believes falls outside of its scope of responsibility for Major Maintenance Services, Contractor shall immediately notify City and/or Property Manager of such defect or maintenance activity.

3.8 Transition Plan Prior to Substantial Completion. Contractor, within thirty (30) days of Commencement Date of this Agreement, shall submit to City and Property Manager, for City and Property Manager review and approval, a Transition Plan Prior to Substantial Completion of ARTIC Project as further described in Schedule 1.

3.9 Traffic Control and Operations. Contractor shall perform the Major Maintenance Services in a manner that recognizes that the safety of the public, convenience of the traveling public and providing a safe work environment for all maintenance workers are of prime importance. Contractor shall perform its traffic control and operations in accordance with the this Agreement.

3.10 General Obligations.

3.10.1 Contractor shall provide all personnel, labor, materials, supplies, parts, equipment, public and employee safety devices, components, tools, utilities and other items and services required to undertake and complete the Major Maintenance Services, regardless of whether the Major Maintenance Services are considered to constitute ordinary, preventive or replacement maintenance. Contractor shall bear the risk of loss, damage, theft and vandalism of such materials, supplies, parts, equipment, devices, components, tools, utilities and other items.

3.10.2 Contractor acknowledges and agrees that, although certain provisions in the in this Agreement include Performance Specifications and Key Performance Indicators, such Performance Specifications and Key Performance Indicators shall not otherwise limit Contractor's obligation to perform the Major Maintenance Services in a safe, reasonable, and prudent manner, and, in doing so, Contractor shall employ Good Industry Practice, and shall conduct its commercial affairs in a manner consistent with good faith and fair dealing.

3.10.3 Contractor shall fully cooperate with third parties, including City's separate contractors, performing work or activities at or adjacent to the ARTIC Facility, and shall schedule the Major Maintenance Services as reasonably necessary to accommodate the work or activities of such third parties.

3.11 Liquidated Damages

Contractor shall maintain the ARTIC Transportation Facility with the highest level standards and service and abide by the Major Maintenance Agreement. The failure of Contractor to meet the Key Performance Indicators as referenced in Schedule 5 will adversely affect the operation of ARTIC. Quantification of the resulting damages is difficult. The parties agree that the liquidated damages set forth below are reasonable estimates of the actual damages that would be incurred by the public and CITY for the specified breaches of the foregoing operating standards, and Contractor agrees to pay to CITY liquidated damages in accordance with this section, at the rates or in the amounts specified below, upon written notification of the occurrence of the specified breach by CITY.

The liquidated damages required by this section are for the adverse effects on ARTIC operations; payment of liquidated damages shall not relieve Contractor of responsibility for physical damage, personal injury, or other harm caused by Contractor, or its employees, agents or contractors.

For non-monetary defaults under this Agreement, CITY in its sole reasonable discretion may determine if a violation of this Agreement has occurred and may impose the following liquidated damages. CITY shall provide written notice of each offense to Contractor. Failure to pay assessments within thirty (30) days of such notice shall constitute a Default under this Agreement. Offenses in this Section are cumulative on a rolling annual basis and the imposition of liquidated damages are in addition to any other remedies CITY may have under this Agreement or other applicable law

Failure to meet the Key Performance Specifications as referenced in schedule 5, will result in ABM being responsible for Liquidated ted Damages in the amount of \$500.00 per occurrence.

ARTICLE IV

CONTRACTOR RESPONSIBILITIES

4.1 Management. Without limiting any of the forgoing provisions of this Agreement regarding the Services to be provided by Contractor as described in Article III above, and as contained or described elsewhere in this Agreement, including in the Exhibits and Schedules, City and Contractor further agree as follows:

(1) Contractor, shall implement, or cause to be implemented, the decisions of City and shall conduct the ordinary and usual business affairs of Contractor and City for the Property as provided in this Agreement. Contractor shall use diligent efforts to conform to all policies and programs established from time to time by City furnished in writing to Contractor and the scope of Contractor's authority shall be expressly limited in accordance with said policies. Contractor agrees to use diligent efforts in providing the services of Contractor described in this Agreement, and to comply with the conditions contained in this Agreement.

(2) Contractor agrees (i) to generally do and perform, or cause to be done and performed, all things necessary, required or desirable in Contractor's judgment for the proper and efficient Major Maintenance of the Property (e.g. the performance of the Services), and (ii) to faithfully and diligently render the Services on its part to be performed hereunder during the term of this Agreement. Contractor shall act in a commercially responsible capacity with respect to the proper protection of and accounting for City's assets. In this capacity, Contractor shall act in City's best interests at all times and shall not enter into contracts, agreements or other arrangements with respect to the Services with any Affiliate of Contractor or other related entity without the prior express written consent of the City in each instance.

4.2 Contractor, Employees and Independent Contractors. Contractor shall at all times have in its employ or contract for sufficient personnel to enable it to properly, adequately, safely and economically maintain and account for the Property and provide the Services. City may require that any on-site personnel or subcontractor of Contractor be removed from duty and replaced with an individual or subcontractor acceptable to City, if City reasonably

determines such personnel or subcontractor to be incompetent, careless, insubordinate, ineffective or otherwise objectionable. All matters pertaining to the selection, direction, employment, supervision, compensation(subject to the approved Staffing Plan and Approved Operating Budget), promotion and discharge of such personnel are the sole responsibility of Contractor or Contractor's subcontractor, as the case may be, which shall be in all respects the employer of such personnel, except that Contractor shall have total responsibility for and shall fully comply with all applicable laws and regulations having to do with workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related subjects. Estimated costs of personnel (including compensation, fringe benefits, insurance and taxes) that are reimbursable to Contractor by City are as set forth in attached Schedules 2 and 3.

(1) Independent Contractor. This Agreement is not one of agency by Contractor for City; rather, Contractor is engaged independently in the business of employing individuals on its own behalf as an independent contractor and City shall have no liability with respect to Contractor's employees. Nothing contained in this Agreement is intended or should be construed as creating the relationship of agents, partners, joint venturers, or associates between the parties hereto or as constituting Contractor as an employee of City for any purpose or in any manner whatsoever. Contractor is an independent contractor and neither Contractor nor its employees, agents, or representatives are employees of City. From any amounts due from City, there will be no deductions for federal income tax or FICA payments, nor for any state income tax, nor for any other purposes which are associated with an employer-employee relationship unless required by law. Payment of federal income tax, FICA payments, and state income tax are the responsibility of Contractor.

(2) Employees. Contractor shall employ either directly or through an affiliated entity or subcontractor all necessary employees to successfully maintain the Property, including those shown in the Staffing Plan attached hereto as Schedule 2. Contractor shall provide the necessary supervision and training to develop and maintain a customer service-oriented and professional staff in alignment with needs and operational requirements of the ARTIC Site. All staff assigned to the Property must pass a criminal background check. Contractor shall maintain tracking metrics for the Property and individual personnel performance through Contractor's adopted system of personnel performance evaluation.

(3) Staffing Plan. Contractor shall provide, and timely update as appropriate, a schedule of personnel in substantially the format of Schedule 2 attached hereto and made a part hereof, to be subject to Contractor's exclusive control and employed in the direct management of the Property. Schedule 2 shall include the number of such personnel engaged by Contractor at any given time, their titles, and whether such personnel are directly employed by Contractor or by Contractor's Affiliate(s) or subcontractor(s). Schedule 2 shall also indicate the compensation being paid to each employee and shall also identify, in the same manner, additional personnel whose costs may, from time to time, be charged to the Property for Services rendered to the Property, which costs may only be allocated to the Property as provided in Schedules 2 and 3 and the Approved Operating Budget, or according to such other method as City and Contractor shall agree. Schedule 2 shall be updated and submitted to City for approval

in conjunction with the Approved Operating Budget and at such additional times as City and Contractor mutually agree.

(4) Customer Service; Public Presentation. All Contractor employees, representatives, suppliers and subcontractors shall act in a courteous professional manner at all times while performing work at ARTIC and/or in connection with Contractor's Services under this Agreement. Every effort shall be made to perform the Services while creating minimum disturbance to the transit users, visitors, ARTIC tenants and nearby business owners. Any Contractor employee, representative, supplier and/or subcontractor, including, supervisors and/or staff, who are determined by the City to be incompetent, disorderly, intemperate, or otherwise objectionable for any reason shall be immediately removed and replaced with a replacement satisfactory to City. All Contractor employees, representatives, suppliers and/or subcontractors at the ARTIC Site or interacting with ARTIC users, visitors, tenants, and/or nearby businesses shall have a neat, well-groomed appearance, and tattoos and/or body piercings shall not be visible.

4.3 Reporting Requirements. As part of its obligations under this Agreement, Contractor shall prepare, execute and maintain detailed plans, manuals and reports (each a "Contractor Report" and collectively, the "Reporting Requirements") including those defined in attached Schedule 11. All Contractor Reports shall be prepared and maintained in electronic format (compatible with the Microsoft Office Suite) and made available to City upon request by City and periodically as provided herein, including upon each modification to each such Contractor Report, as applicable. The schedule for initial completion and updates to each Contractor Report are defined in Schedule 11, in addition to requirements for input and approvals from the City and designated third parties. Each Draft Table of Contents below is subject to change by Contractor in its development of each Contractor Report; provided, each Contractor Report shall be subject to review, comment and approval by City, in its reasonable discretion. Upon completion and approval by City, each Contractor Report shall be incorporated into this Agreement and shall be deemed to set forth substantive Contractor requirements and obligations thereunder and the Contractor requirements set forth in each Contractor Report shall be incorporated into the Agreement as if set forth in full therein. As used in this Schedule 11, "TCO" means receipt of the Temporary Certificate of Occupancy (TCO) for ARTIC.

In addition, progress reports will be used to track progress and compliance under the terms of this Agreement. Monthly progress reports shall be submitted to the City on the first Monday of each month beginning the first Monday of the month following City Council approval of the Agreement. These monthly reports shall continue through June 30, 2015. Monthly reports shall include, but not be limited to the following: (i) plan of activities, events, efforts, contacts, meetings, presentations, negotiations, etc. for the next thirty (30) days; (ii) training and testing schedule that provides for successful training and testing of facility equipment in accordance with the construction Commissioning Schedule; (iii) status and progress of all activities, events and efforts; (iv) summary of meetings and presentations; and, (v) any and all deviations from project deliverable or schedule.

4.4 Interfacing with Property Manager. The Property Manager is the service provider, serving as the primary interface between the City and the Contractor, as well as all other subcontractors for the Project, who manages, markets, leases and performs select operation and maintenance activities at the ARTIC Site, pursuant to that certain agreement entered into by and between the City and Property Manager, dated December 17, 2013. The Contractor shall be responsible for coordinating efforts and interfacing with the Property Manager and their subcontractors to ensure performance standards are met and on call activities are responded to in a timely manner. Contractor shall work and coordinate its Services with Property Manager to ensure ARTIC Site, and compliance with various third party agreements relating to the use of the ARTIC Site and ARTIC parking facilities; provided, however, the foregoing shall not apply to contracts with the City's Construction Contractor or Construction Manager. Under this Agreement, Contractor shall work with and take directions from Property Manager (on behalf of City). In addition, Contractor shall attend monthly or ad hoc meetings called by Property Manager as may be needed.

4.5 Compliance with Laws, Agreements, etc.

(1) Governmental Requirements. Contractor shall maintain the Property in compliance with all Governmental Requirements, including those specific federal requirements listed in Schedule 12, that are now or hereafter promulgated insofar as they relate to Contractor's performance of this Agreement. Contractor shall give prompt notice to City of any violation or notice of alleged violation of any Governmental Requirements. Contractor, to the extent permitted under the Approved Operating Budget and, when not so permitted, following authorization from City, shall promptly remedy any and all violations of any applicable Governmental Requirement related to Major Maintenance at the Property, except in cases where City is contesting or intends to contest such Governmental Requirement (in which case City shall give Contractor prompt written notice of its decision to so contest) or in those cases where City directs otherwise. City and Contractor agree to cooperate with each other to cause the Property to be maintained at all times in compliance with all applicable Governmental Requirements and shall not knowingly, directly or indirectly, suffer, permit or make any use of the Property that is prohibited by any such Governmental Requirements.

(2) Licenses and Permits. Contractor shall obtain and maintain, either directly or in conjunction with City as necessary or appropriate, all necessary licenses and permits required by any governmental agency for the operation and maintenance of the Property and as may be necessary to provide the Services.

(3) Property Agreements. City has advised Contractor that the Property is currently subject to the agreements, covenants, conditions and restrictions contained in those certain deeds, mortgages, ground leases, easements, operating agreements and other instruments listed in Schedule 7 attached hereto (collectively, the "Property Agreements"). True, correct, and complete copies of the Property Agreements have been delivered to Contractor by City. Contractor covenants and agrees to use reasonable efforts to perform all of the obligations and duties to be performed by City, related to Major Maintenance services, under the Property Agreements (and such other agreements as may be entered into by City and delegated to, and accepted by, Contractor from time to time), subject to City providing any

necessary funds and information. Except as to the obligation of the Contractor to use reasonable efforts to perform the obligations and duties set forth in such Property Agreements thereunder, City shall remain liable thereunder. Also, as to the Property Agreements already in effect, City shall attempt to have Contractor added as an additional insured, to the extent that City has secured same for itself.

(4) CUP No. 2012-046. Contractor shall ensure that all uses and activities at the Site shall comply with Conditional Use Permit No. 2012-046 and applicable provisions of the City Municipal Code.

(5) Expenses. Expenses incurred in complying with, or remedying violations of any Governmental Requirements will be paid as provided in the Approved Operating Budget. When the amounts specified in the Approved Operating Budget are insufficient, or in the event Contractor lacks necessary information or documentation to so comply or remedy, Contractor shall notify City and/or Property Manager as soon as possible and City and/or Property Manager shall provide needed funds, information or documentation or take such other action as it deems appropriate and Contractor shall not be responsible for compliance with or remedying a violation of a Governmental Requirement where City and/or Property Manager elect not to provide funds in a specific instance or to proceed to, or authorize work or other activity to, comply or remedy such violations. Notwithstanding anything to the contrary set forth in this Agreement, Contractor shall be solely responsible for paying any and all costs and expenses incurred to remedy violations of any Governmental Requirements to the extent such violations are caused by Contractor or any employee, contractor, subcontractor, consultant, subconsultant, agent, representative or other person acting on behalf of or under the supervision of Contractor.

4.6 Supplies. Contractor shall purchase, provide and pay for, as agent for City, and as provided in the Approved Operating Budget supplies incident to performance of the obligations herein assumed by Contractor. Contractor shall maintain records for all supplies, tools and equipment purchased hereunder by Contractor for use in the maintenance of the Property. The same shall be delivered to and stored in the Property and shall remain the property of City and shall be used only in connection with the Property. Notwithstanding the foregoing, City may elect to procure supplies for ARTIC by written notice to Contractor specifying the supplies City intends to procure, including quantities and timing of such procurements.

Unless otherwise specified, all materials used by Contractor in performance of the Scope of Services shall be new, in conformance with manufacturer specifications and subject to approval of City or Property Manager. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

In the event that Contractor rents or leases equipment to complete and/or perform the Scope of Services, Contractor agrees that it shall be solely responsible for such rented/leased equipment until it is returned to its source or supply. Such responsibility shall include, but not be limited to, liability, fire, theft, vandalism and use by any unauthorized persons. Contractor shall indemnify, defend and hold City and Property Manager, and anyone directly or indirectly

employed by City or Property Manager harmless from and against any and all claims relating to the possession, use or presence on the Property of such rented/leased equipment.

4.7 Service Contracts. Contractor shall be authorized to enter into contracts for the Services required under this Agreement, as provided in the Approved Operating Budget. All service contracts shall: (a) be signed by Contractor; (b) be assignable, at City's option, to City or City's nominee; (c) include a provision for cancellation thereof by Contractor or, if Contractor fails in its duty to cancel at direction of City, by City directly for cause, or without cause, upon not more than 30 days' written notice (unless such provision is waived by City); (d) and shall contain necessary language to (1) name Contractor and City as additional insureds, and (2) ensure that City is protected under the indemnification provision, specifically as a third-party beneficiary, to an extent at least equal to the indemnity protection afforded to Contractor; (e) require that all contractors provide evidence of the insurance set forth below unless waived by Contractor and City. Contractor shall use competitive bidding or other similar commercially reasonable process to select vendors for such contracts and provide City with documentation showing that the methodology for selecting vendors who are the most responsive and responsible providers, and providing competitive pricing with respect to such contracts, and Contractor shall annually review the selection process and contract with the City. At any time, City shall have the right to review the terms and conditions of all contracts contemplated under this Section and all such contracts shall terminate upon thirty (30) days' notice from City to Contractor that City has determined in its discretion that the contract is unacceptable to City. Without limiting in any manner Contractor's obligations hereunder or the terms of this Agreement, all such contracts shall be in accordance with the requirements of Sections 12.3, 12.4, 12.5, 12.6, 12.7, 12.10, 12.11 and 12.12 below. Any subcontractors Contractor presented to City as part of Contractor's RFP proposal shall be contracted with consistent with Contractor's representations to City in Contractor's RFP proposal, unless otherwise expressly approved by City.

4.8 Warranty. Contractor fully warrants and unconditionally guarantees that all services rendered in connection with the Scope of Services and this Agreement to be of good workmanship in conformity with the Scope of Services and contract documents. Upon written notice from City or Property Manager that the workmanship is not satisfactory, Contractor agrees within ten (10) days after notice to begin and proceed with reasonable diligence to correct any deficiencies in a satisfactory manner at its own cost and expense. If Contractor fails to proceed as above stated, City at its option and without further notice to Contractor may proceed to arrange for such work to be done at the expense of Contractor, and Contractor specifically agrees to pay for same within five (5) days of receipt of bill from City reflecting such work, or City may deduct payment for such work from monies not yet paid to Contractor. If in repairing its own work Contractor damages the work of anyone else, repairing and paying for repairs of such other work is included in Contractor's responsibility. All materials and goods shall be according to the specifications in the Scope of Services of this Agreement. All warranties made by the manufacturer or supplier of any materials and goods will be transferred and assigned to the City, to the extent they are transferable and assignable.

4.9 Environmental. This Agreement and Contractor's performance of the Services shall be subject to the following:

(1) Procedures, Training, Permits and Licenses. Contractor shall develop procedures and provide training to staff in the identification, handling, clean up and proper disposal of Hazardous Materials encountered on the ARTIC Site and shall obtain and maintain all necessary permits and licenses and Material Safety Data Sheets (MSDS) all in accordance with the Operations & Maintenance Plan referred to in Schedule 11.

(2) Prohibition. Contractor shall not, nor shall it authorize or permit any Person to, use any portion of the Property to generate, manufacture, refine, transport, treat, store, use, sell, recycle, handle, dispose of, transfer, produce or process any Hazardous Materials, except for such Hazardous Materials in such quantities as are useful and appropriate for the operation and maintenance of the Property, and in such event, in a manner commensurate with the operation of similar transit centers and in compliance with all applicable Governmental Requirements and Environmental Laws. Contractor shall not cause, authorize or permit the release, spill, leaking, pumping, pouring, emitting, discharging, leaching, disposing or dumping of any Hazardous Materials on, in, under, about or from any portion of the Property. Notwithstanding the foregoing, nothing contained in this Agreement shall be construed as requiring Contractor to prevent or supervise any action of, nor shall Contractor have any liability or responsibility with respect to OCTA, SCRRA, Amtrak, or other transit providers, including freight carriers, or any other Person acting on behalf of such entities, with respect to Hazardous Materials.

(3) Notice. Contractor shall promptly advise City in writing (in accordance with the Operations & Maintenance Plan) promptly upon (i) Contractor's discovery of the presence or release of any Hazardous Materials in, on, under, about or from any portion of the Property (except as permitted under Section 5.11(2) above); (ii) any remediation Contractor believes may be required to remedy such Hazardous Materials contamination; (iii) Contractor's discovery of any occurrence or condition in, on, under, about or from any portion of the Property that could cause ARTIC or any portion thereof to be classified as "border-zone property" under the provisions of California Health & Safety Code Section 25220, et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any regulation of or restrictions on the ownership, occupancy, transferability or use of the ARTIC Site or any portion thereof under any Governmental Requirement or Environmental Laws. Contractor and City shall provide each other with copies of any notices received by either party from any government agency relating to the environmental condition of, or activity on or about, any portion of the ARTIC Site, within three (3) Business Days after receipt of same. Contractor shall not engage in investigation or remediation work relating to any Hazardous Materials, and shall not meet or consult with any government agency, without the prior written consent of City.

(4) Indemnification. To the fullest extent permitted by law, Contractor hereby agrees to indemnify, hold harmless, protect and defend Indemnitees from and against any and all liabilities, losses, and damages including, but not limited to, damages for the loss or restriction on use of rentable or usable space, judgments, fines, demands, claims, recoveries, deficiencies, cost and expenses including, but not limited to, reasonable attorney's fees, court costs and all other professional or consultant's expenses, arising out of the negligent

or wrongful use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from, under, over or about the Property by Contractor, or Contractor's agents or contractors, including the cost of any restoration, clean-up or detoxification of the Property during the term or after the expiration of this Agreement, provided, however, in no event shall Contractor have any liability or obligation with respect to, nor shall Contractor's indemnification obligations apply to (i) any Hazardous Materials existing at the Property prior to the expiration of the Transition Period and not disturbed or handled by Contractor or any employee, contractor, agent, representative or other person acting on behalf of or under the supervision of Contractor, or (ii) any Hazardous Materials brought to the Property, or used, generated, stored, handled, treated, disposed or transported by any person or entity other than Contractor, provided, however, that this provision shall not relieve Contractor of its obligations under Section 5.10(2), above.

4.10 Bond Requirements. Upon the execution of this Agreement, Contractor shall provide to the CITY a performance bond to secure its performance of Scope of Services under this Agreement. Contractor shall maintain this bond for the entire term of this Agreement. Such bond shall be written in the principal amount of not less than Five Hundred Thousand Dollars (\$500,000.00). Such bond shall be written with surety (i) authorized to do business in the State of California by the California Department of Insurance, and (ii) listed on the most current version of the Department of Treasury's Circular 570.

ARTICLE V

INDEMNIFICATION; INSURANCE

5.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the Indemnitees from and against any liabilities, damages (including without limitation for Claims filed against City by a third-party, direct, special and consequential damages), costs, expenses, suits, losses, claims, actions, fines and penalties, including, without limitation, court costs, reasonable attorneys' fees and any other reasonable costs of litigation (hereinafter collectively, "Claims") that any of the Indemnitees may suffer, sustain or incur arising out of or in connection with:

(1) Contractor's Services or work on, and Contractor's operation, maintenance, or occupation of, the Property, including but not limited to any acts, errors or omissions, willful misconduct, or fraud of Contractor, its employees, contractors, subcontractors, agents, or others working on behalf of Contractor, whether active or passive, actual or alleged, whether in the provision of the Services, failure to provide any or all of the Services, or otherwise.

(2) any Default by Contractor of this Agreement;

(3) assertions under workers' compensation or similar employee benefit acts by Contractor or its employees or agents, and/or any failure by Contractor to pay any employment benefits and any taxes required of it of any nature whatsoever;

(4) Contractor's failure to comply with any Governmental Requirements in connection with Contractor's performance under this Agreement;

(5) Claims by any employee of Contractor including, without limitation, for bodily injury, death, wrongful discharge, or other employment practices liability; and/or

(6) any infringement or alleged infringement of any patent, copyright, trade secret or other proprietary right of any third party relating to the Services performed under this Agreement.

The foregoing indemnification shall apply irrespective of whether (a) Claims are asserted by any Indemnitees or by unrelated third parties against the Indemnitees, including but not limited to patrons, occupants, tenants, and invitees of or to those portions of the ARTIC Site which fall under Contractor's control, authority, duties, responsibility, management, or oversight, or (b) whether the Indemnitees are partially, or are alleged to be partially, at fault for the Claims. Notwithstanding the foregoing, Contractor is not required to indemnify the Indemnitees against Claims to the extent that such Claims result directly from the active negligence, willful misconduct, or fraud of the Indemnitees, their officials, employees. Nothing contained herein shall relieve Contractor of any responsibility for Claims regardless of whether Contractor is required to provide insurance covering such Claims or whether the matter giving rise to the Claims is the responsibility of Contractor's agents, employees, contractors, or subcontractors. Each Indemnitee shall have the right to participate in the defense of any claim against it that is covered by Contractor's obligations hereunder, including the right to retain its own legal counsel of its choice, at Indemnitee's expense in the event a conflict of interest exists between Indemnitee and Contractor; provided that nothing herein shall limit an Indemnitee's rights as an additional insured on Contractor's insurance required under Section 5.2

Except as otherwise provided for herein regarding third-party claims, Contractor shall not be liable to Indemnitees for loss of profits or for indirect, special, or consequential damages.

Contractor shall promptly pay over, reimburse, and make good to Indemnitees all sums of money that Contractor is obligated to pay by any reason of Contractor's indemnification obligations under this Agreement.

The provisions of this Section 5.1 shall survive the expiration or the termination of this Agreement.

5.2 Insurance Requirements.

(1) Contractor agrees to secure and maintain in full force and effect for the full Term of this Agreement, at Contractor's sole cost and expense, except the extent set forth in the Approved Operating Budget hereunder, the insurance coverage, with the required terms and conditions, set forth in this Section 5.2.

(a) Workers Compensation Insurance in compliance with the laws of the State of California, including Employers Liability Insurance, in an amount not less than \$1,000,000 per occurrence.

(b) Contractor has the responsibility to manage, operate, conduct day-to-day maintenance, and coordinate and oversee other parties' work on the Property, including but not limited to the work of the MM Provider and the Parking Manager. Its Commercial General Liability Insurance shall cover such responsibilities and shall be written on an occurrence form, CG 00 01 or equivalent, with defense costs in addition to limits, insuring Bodily Injury, Personal Injury, and Property Damage, including Premises and Operations coverage for the entire ARTIC Site (except for any areas otherwise specifically carved out of Contractor's area of responsibility), Product and Completed Operations coverage, Contractual Liability coverage, Independent Contractors coverage, Personal Injury and Advertising Injury coverage, and without exclusion for explosion, collapse or underground hazards, in an amount not less than \$1,000,000 per occurrence, and not less than \$2,000,000 in the aggregate for this location and Agreement. The Indemnitees shall be named as additional insureds on ISO forms CG 20 10 07 04 and CG 20 37 07 04 or CG 20 10 11 85, or an equivalent form of a Blanket Additional Insured Endorsement for loss arising from Contractor's operations, work, and completed operations for as long as the additional insureds may be exposed to liability arising from Contractor's work. Such insurance shall be the primary coverage for all Claims of whatever type and nature, shall provide coverage for the Premises risk for the entire ARTIC Site (except for any areas otherwise specifically carved out of Contractor's area of responsibility) and shall not seek contribution from any insurance or self-insurance maintained by the additional insureds. Such Commercial General Liability Insurance shall provide coverage for third-party injuries and losses which may occur, have occurred, or are alleged to have occurred, and shall respond whether or not a claimed loss has, or has not, been proven to be valid; such to the terms and conditions of the policy.

(c) Comprehensive Automobile Liability Insurance on all owned, non-owned, hired or leased automotive equipment used in the performance of the Services, in an amount not less than \$1,000,000 per occurrence, combined single limit, written on an occurrence form.

(d) Excess or Umbrella Liability Insurance excess of the underlying Commercial General, Automobile, and Employer's Liability, in an amount such that when added to the primary coverage required above shall not be less than \$10,000,000 per occurrence, written on an occurrence form. The policy shall be concurrent with and follow the form of the underlying insurance, including additional insured provisions and shall be primary and noncontributing with any insurance maintained by the additional insureds.

(e) All-Risk Property Insurance in an amount equal to the replacement value of Contractor's personal property and equipment at the Property, if any. .

(2) On insurance policies where the City and the Indemnitees are named as additional insureds, the City and the Indemnitees shall be additional insureds to the full limits of liability purchased by the Contractor, even if such limits of liability are in excess of those

required by this Agreement. If a policy has language to the contrary, Contractor must secure and provide to City an endorsement removing such limitation. Any agreements entered into by either Contractor or City, subsequent to the effective date of this Agreement with respect to the Property shall name City and Contractor as additional insureds (on all applicable coverages) and, to fullest extent obtainable, shall provide for a waiver of subrogation.

(3) The limits of coverage set forth herein are only minimum requirements and shall not serve to limit any higher levels of coverage otherwise purchased by Contractor.

(4) Contractor's insurance coverages required herein must include a waiver of the insurance companies' rights of subrogation against City and the IndemnitesIndemnites and City hereby agrees to cause its insurance companies to waive their rights to subrogation against Contractor.

(5) Prior to beginning work under this Agreement, Contractor shall submit to City evidence of the coverages required in this Section 5.2, and within 30 days of the effective date of this Agreement shall submit endorsements to Contractor's coverage in form and substance satisfactory to City as required in this Section 5.2, including additional insured requirements. The General Liability Insurance policy shall further provide for (i) severability of interests wherein Contractor is insured against any claims that may be brought by the additional insureds. If the insurance information is not submitted within ten (10) days from the due dates set forth herein, then following three (3)five (5) business days prior written notice to Contractor for an opportunity to cure, this Agreement may be terminated for cause at City's option. In the event of cancellation or non-renewal of any insurance coverage or insurance policy required in this Section 5.2, Contractor agrees to provide at least thirty (30) days prior written notice of such cancellation or non-renewal to City, and ten (10) days prior written notice of cancellation if cancellation is for non- payment of premium. Such written notice of cancellation shall be regular mail to City. Should any policy expire or be canceled before final payment to Contractor and Contractor fails to immediately procure other insurance as specified, City reserves the right, but shall not have the obligation, to procure such insurance as will protect City from such failure, and to charge the Contractor for such costs and/or deduct the cost from any sum due Contractor under this Agreement. Exercise of the remedies set forth herein, however, are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's failure to maintain insurance or secure and provide appropriate certificates and endorsements.

(6) All insurance required by this Agreement shall be written by insurance carriers licensed to do business in the State of California, and such carriers must be rated no less than A VII by the most current listing in Best's Key Rating Guide Contractor shall be permitted to meet the insurance requirements by means of self-insurance, such self-insurance programs must operate in the same manner as a typical commercial insurance policy, including, but not limited to, agreement that the Additional Insureds shall have the same rights as additional insureds as they would have had if coverage had been provided under a typical commercial insurance policy issued by a typical commercial insurance company.

(7) In the event that a claim or other legal action is filed against City, and if City, in its good faith opinion, believes it may have coverage under any of the insurance required herein, then City has the right to demand, and to receive within a reasonable time period, copies of the insurance policies related to such required insurance; provided, however, that this provision shall not apply if the parties agree that Contractor shall fully defend, hold harmless, and indemnify City against any such claim or other legal action.

(8) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's, (or Contractor's contractors/subcontractor, if any) performance of the Services provided under this Agreement.

(9) In the event Contractor hires other persons or firms to perform some of the work related to this Agreement, Contractor shall ensure, and certify to City in writing, (i) that the acts or omissions of such persons or firms are covered under the above-referenced liability insurance, or (ii) that such firms maintain insurance equal to or better than, and subject to the same limits, terms and conditions as, the insurance required of Contractor under this Agreement (except for firms which are not performing professional services—such firms shall not be required to carry the above-referenced professional liability insurance); and in either instance, Contractor may be required, at City's option, to provide, or cause to be provided, evidence of such insurance coverage, reasonably acceptable to City. Contractor must be aware that for work to be performed by its contractor(s) on the rail platforms, such contractor(s) shall be required to secure and carry Railroad Protective Liability Insurance and such insurance shall meet the responsibilities of Contractor and City to provide such insurance.

(10) The City's Risk Manager is authorized to reduce the requirements set forth herein in the event he determines that such reduction is in City's best interest.

ARTICLE VI

CITY'S RIGHT TO AUDIT; PROPERTY INSPECTION

6.1 City's Right to Audit. City reserves the right to audit and to examine any cost, revenue, payment, charges, claim, other record, or supporting documentation resulting from any items set forth in this Agreement. Any such audit(s) shall be undertaken by City or City's representative(s) (collectively referred to in this Article as "City") at reasonable times and in conformance with generally accepted auditing standards. City's rights to audit shall include the right to contact third parties to confirm entries in Contractor's supporting documentation. Contractor agrees to fully cooperate with any such audits and shall make office and support facilities available to City representatives as may be reasonably necessary to complete any such audits and inspections. At City's request, Contractor shall make its books and records available to the City or its representatives. Contractor shall also provide City or its representative with copies of specifically identified books and records.

6.2 Audit Period. This right to audit shall extend during the length of this Agreement and for a period of four (4) years following the date of final payment under this

Agreement, or until any on-going audit is completed. Contractor agrees to retain all necessary records and documentation for the entire length of this audit period.

6.3 Audit Results. Contractor will be notified in writing of any exception taken as a result of an audit. Should an audit discover either weaknesses in internal control or errors in recordkeeping, Contractor shall correct such discrepancies either upon discovery or within a reasonable period of time. Contractor shall inform City in writing of the action taken to correct any audit discrepancies. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Contractor's records shall be made within thirty (30) days from presentation of City's finding to Contractor. If Contractor fails to make such payment, Contractor agrees to pay interest accruing monthly at a rate of twelve percent (12%) per annum or the highest interest rate permitted by law, whichever is lower. Interest will be computed from the date of written notification of exception(s) to the date Contractor reimburses City for any exception(s). If an audit inspection or examination in accordance with this Article discloses overcharges and/or underpayment (of any nature) by Contractor to City in excess of one percent (1%) of the total billings for the period being audited, the actual cost of City's audit shall be reimbursed to City by Contractor.

6.4 Agreements with Subcontractors. Contractor shall include a clause in its agreements with subcontractors reserving the right for audits to be performed by its own employee representative(s) or its contracted representatives, and representatives from City, or its contracted representative(s), who shall have the right to audit and examine any cost, revenue, payment, charges, claim, other record, or supporting documents resulting from any items set forth in its agreements. The clause shall further set forth that this right to audit shall extend during the length of this Agreement and for a period of four (4) years following the date of final payment under this Agreement, or until any on-going audit is completed, and such subcontractor agrees to retain all necessary records and documentation for the entire length of this audit period.

6.5 Production of Documents. Contractor shall, upon City's written request from time to time, submit copies of any contract, bill, license, agreement or any other document relating to the Property or to this Agreement in Contractor's possession to City.

6.6 Inspections. City (and City's designees) shall be entitled to inspect the Property at any and all times, and from time to time, without notice. Contractor shall fully cooperate with City (and City's designees) to facilitate any such inspection.

ARTICLE VII FINANCIAL MANAGEMENT AND ACCOUNTING

7.1 Initial and Annual Approved Operating Budgets. On or before each October 1, Contractor shall prepare and submit to City and Property Manager a proposed operating budget for maintenance, including landscaping and grounds maintenance of the Property for the upcoming fiscal year (July 1 through June 30). The budget process, including the process for preparation and approval of the initial budget, is further described in attached Schedule 8. Property Manager and City will consider each proposed budget and will consult with Contractor

prior to the commencement of the fiscal year in order to agree on an “Approved Operating Budget.” If written approval or disapproval of the proposed budget has not been received by Contractor by the commencement of the year, Contractor shall to the extent possible continue to maintain the Property subject to the budget in place for the prior year, and shall inform City and Property Manager of any budget items in excess thereof which must be funded prior to agreement on an Approved Operating Budget for the current fiscal year. Contractor agrees to use diligence and to employ all reasonable efforts to ensure that the actual costs of maintenance shall not exceed the total Approved Operating Budget. Contractor shall inform Property Manager and City not less than monthly of increases in costs and expenses that were not foreseen during the preparation of the Approved Operating Budget. Any increase of more than 15% or \$100,000 (whichever is lower) in the dollar amount allocated to a category or item within the Approved Operating Budget shall require City’s and/or Property Manager’s express, written prior approval; provided, any increase not requiring City’s and/or Property Manager’s approval remains subject to the total, not-to-exceed amount of the Approved Operating Budget.

7.2 Financial Management and Accounting. Contractor will provide financial management and accounting services for the maintenance of the Property to support, and as necessary, reasonable and appropriate for, the Services described in this Agreement (including the Schedules, and specifically the Financial and Accounting Plan described in Schedule 11).

(1) Financial Reports. Prepare financial reports in accordance with the Financial and Accounting Plan described in Schedule 11. Contractor shall maintain an accounting system for that will allow the delivery of financial reports described in the Financial and Accounting Plan on a monthly, quarterly and yearly basis, as applicable, track accounts using specific account codes (provided by Property Manager) and produce monthly invoices to the satisfaction of Property Manager and the City no later than fifteen (15) calendar days after the end of each month. All financial statements and reports required by City will be prepared on an accrual method of accounts in accordance with generally accepted accounting principles or with such other methods as City may from time to time request in writing.

7.3 Procedure for Payment of Expenses. Contractor shall submit invoices to the Property Manager and City for reimbursements of eligible expenses on a monthly basis no later than fifteen (15) calendar days after the end of each month and shall include only those expenses that were paid or incurred during the invoiced month. Contractor shall submit to Property Manager and City backup for all expenses and any other amount to be paid to Contractor as provided in this Agreement or which City is to reimburse Contractor as provided in this Agreement, including as provided or set forth in any of the Schedules. Upon approval by City, Property Manager shall disburse funds from the ARTIC Operating Account to Contractor only after verifying the accuracy of the invoices. Payment by City is due thirty (30) days from City's approval of Contractor's invoice.

(1) The following support documentation must be provided, in an organized manner, for each invoice:

(a) Summary of each account for the monthly accounting period including the vendor, amount, description and check number of each expense paid for, followed by the total for that account.

(b) A copy of the check for each disbursement.

(c) A copy of the bill with all backup documentations and costs as reasonably deemed necessary by City and Property Manager.

(2) Contractor will process bills in a timely manner to avoid late charges. City shall only pay late fees in the event such late fees result from City's and/or Property Manager's failure to sufficiently fund the ARTIC Operating Account or provide timely approvals. A late charge for the lesser of 1.5% per month, or the maximum rate permitted by law shall be paid by City on any past due and undisputed invoices for which payment is not received within 20 days after due date. If City's account is referred to an agency or attorney for collection, City shall reimburse Contractor for its attorney's fees and collection costs.

7.4 Authorized Expenses.

(1) Costs Eligible For Payment from ARTIC Operating Account. After receiving approval from City and Property Manager as set forth herein, Contractor shall be paid from the ARTIC Operating Account all expenses properly incurred by Contractor pursuant to this Agreement that are set forth in the Approved Operating Budget or otherwise approved by City and Property Manager, in writing, or as provided in the Schedules, including the following expenses:

(a) Cost to correct any violation of Governmental Requirements;

(b) Legal fees of attorneys provided such attorneys have been approved by City in writing in advance of retention;

(c) All compensation payable to Contractor pursuant to this Agreement, including, but not limited to, Major Maintenance Fees and Operating Expenses as defined in the Approved Operating Budget; which shall be in the amounts identified in Schedule 8;

(d) Costs of supplies purchased by Contractor pursuant to Section 4.3;

(e) Travel expenses for Contractor's personnel listed on Schedule 2 incurred to provide direct services to the Property to the extent included in the Approved Operating Budget or as otherwise approved by City, and subject to the following: all airfare will first be authorized by City and will be reimbursed at coach rates; lodging, meals, ground transportation and incidentals necessitated by this Agreement will be reimbursed according to the Internal Revenue Service ("IRS") Regular Per Diem Rate Method or actual cost, whichever is less; mileage will be reimbursed at the IRS rate in effect at the time of travel.

(2) Non-reimbursable Costs. The following expenses or costs incurred by or on behalf of Contractor shall be at the sole cost and expense of Contractor and shall not be reimbursed by City and/or Property Manager:

(a) cost of gross salary and wages, payroll taxes, insurance, workmen's compensation, and other benefits of Contractor's personnel, except such costs pertaining to employees employed by Contractor in accordance with attached Schedule(s) 2 and 3;

(b) cost of insurance required to be maintained by Contractor at its own expense hereunder or purchased by Contractor for its own account, except to the extent approved by City as part of an Approved Operating Budget, in which case liability insurance per-occurrence deductibles, not to exceed \$10,000 per occurrence, incurred by Contractor under a liability insurance policy approved for reimbursement as part of an Approved Operating Budget shall also be deemed a reimbursable cost;

(c) cost of forms, stationery, ledgers and other supplies and equipment used at Contractor's corporate office except such forms as may be used exclusively for the benefit of the Property or City;

(d) cost of employee bonuses, incentive compensation or pay advances except such costs for on-site staff as are shown on attached Schedule(s) 2 and 3 or approved by City as part of the Approved Operating Budget;

(e) cost for travel for Contractor's corporate office personnel who travel to and from the Property or City's offices, unless included in the Approved Operating Budget;

(f) cost of general accounting and reporting services, as such services are considered to be within the reasonable scope of Contractor's Services hereunder and are compensated for as part of the Major Maintenance Fee; and

(g) costs attributable to losses arising from gross negligence, willful misconduct, fraud or breach of this Agreement on the part of Contractor or Contractor's employees, officers, directors, contractors and/or subcontractors;

(h) Contractor's corporate office employee training expenses and recruiting fees;

(i) costs of providing fidelity and crime insurance as set forth in Section 5(2)(f);

(j) costs not contemplated in Approved Operating Budget unless approved by the City.

ARTICLE VIII

CITY'S RESPONSIBILITIES

8.1 Office and Equipment. City shall, at its expense, provide to Contractor suitable space constructed and furnished in a manner consistent with the image and marketing of the Property, as determined by the City, acting in its sole and absolute discretion, including any equipment or office furnishings in the Property, free of any rent or other charges, in order for Contractor to properly fulfill its duties and obligations under this Agreement with respect to the Property, as further provided on attached Schedule 2. Contractor shall not be required to pay rent for such space. Any repair, renovation or replacement of Contractor's office space, furniture and/or equipment shall be subject to the Approved Operating Budget. Upon termination of this Agreement, the office space, furniture and/or equipment shall be in good condition, reasonable wear and tear excepted. Notwithstanding anything herein to the contrary, Contractor shall have only a right to use the space, furniture and equipment hereunder and not an interest in property with respect thereto.

8.2 Payment of Taxes and Amounts Due. City shall be responsible for all taxes due and payable on any payments to Contractor hereunder, including any sales tax, value-added tax or gross receipts tax, provided, however, in no event shall City be responsible for any net income or franchise tax assessed against Contractor, all of which shall be the responsibility of Contractor.

8.3 All-Risk Property Insurance. Throughout the term of this Agreement, City shall carry, or shall cause to be carried, All-Risk Property Insurance covering the ARTIC Facility and any City-owned equipment permanently affixed thereto (in the amount of the full replacement cost thereof), and covering City's personal property, subject to the same coverage terms and conditions as City procures for the rest of its insured property. Such Property Insurance may be combined with, or provided under, the City's blanket property insurance on all of its structures and facilities. At present, and possibly in the future at City's sole and absolute discretion, the City does not insure its property against the perils of land movement/subsidence (including without limitation the peril of earthquake), flood, or terrorism. Also, some property coverages such as landscaping, are subject to sublimits, a list of which are available for Contractor upon request to City. It is understood and acknowledged that Contractor shall not be liable to City for any uninsured first-party property losses (sometimes referred to as casualty losses or events) to the property referenced in this Section 8.3; provided, however, that such non-liability shall not extend to losses resulting from Contractor's willful misconduct and the City's property insurance does not generally cover hardscape.

ARTICLE IX

REPRESENTATIONS AND WARRANTIES

9.1 Contractor's Representations and Warranties.

(1) Contractor's Expertise . Contractor represents and warrants that it has or will retain skilled, experienced and sophisticated employees in each of the areas of expertise included in the Services, including and that such individuals have, cumulatively, all the expertise necessary to perform all of the Services under this Agreement.

(2) Power. Contractor has the full power, authority and legal right to enter into this Agreement and to consummate the transactions contemplated hereby and the individuals executing this Agreement on behalf of Contractor have the corporate power, right and actual authority to bind Contractor to the terms and conditions hereof.

(3) Conflicts. The execution and delivery of this Agreement, the incurring of the obligations set forth herein and compliance by Contractor with the terms of this Agreement and the documents referenced herein (i) do not conflict with the articles of incorporation or by-laws of Contractor, (ii) do not, to the knowledge of Contractor, violate any Governmental Requirements, and (iii) do not conflict with and will not result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or document to which Contractor is a party.

(4) General Representation. No representation, warranty or statement of Contractor in this Agreement, or in any document, certificate or schedule furnished or to be furnished to City by Contractor (whether before or after the Commencement Date) contains or will contain any untrue statement of a material fact or intentionally omits or will intentionally omit to state a material fact necessary to make the statements or facts contained therein not misleading.

9.2 City's Representations and Warranties.

(1) Power. City has the full power, authority and legal right to enter into this Agreement and all documents referenced herein, and to consummate the transactions contemplated hereby and the individuals executing this Agreement on behalf of City have the corporate power, right and actual authority to bind City to the terms and conditions hereof.

(2) Conflicts. The execution and delivery of this Agreement, the incurring of the obligations set forth herein and compliance by City with the terms of this Agreement (i) do not conflict with the charter or legal authority of City, (ii) do not, to the knowledge of City, violate any Governmental Requirements, and (iii) do not conflict with and will not result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or document to which City is a party.

(3) General Representation. No representation, warranty or statement of City in this Agreement or in any document, certificate or schedule furnished or to be furnished to Contractor by City (whether before or after the Commencement Date) contains or will contain any untrue statement of a material fact or intentionally omits or will intentionally omit to state a material fact necessary to make the statements or facts contained therein not misleading.

9.3 Reliance. Contractor acknowledges and agrees that City is relying upon the representations and warranties set forth in Section 9.1 in entering into this Agreement, and City acknowledges and agrees that Contractor is relying upon the representations and warranties set forth in Section 9.2 in entering into this Agreement.

ARTICLE X COMPENSATION

10.1 Compensation. Each prescribed monthly accounting period Contractor shall receive remuneration for its Services in accordance with the terms of this Agreement. Contractor shall receive the following fees:

(1) a monthly Major Maintenance fee in the amounts shown on attached Schedule 3 for each monthly accounting period, for performance of the Scope of Services at the ARTIC Facility for the initial term and any extension term ("Major Maintenance Fee(s)")

(2) a monthly Subcontractor Administration Service Fee in the amounts shown on the attached Schedule 3 for each monthly accounting period, for costs associated with the administration of subcontracts necessary for the performance of the Scope of Services at the ARTIC Facility for the initial term and any extension of term. ("Subcontractor Admin Service Fee")

(3) Compensation

The Major Maintenance Fee(s) and Operating Expenses shall be paid to Contractor from the ARTIC Operating Account through an ACH Electronic Funds Transfer or such other payment method as may be agreed upon by Contractor and City and/or Property Manager.

(4) Incentive Compensation as set forth in Schedule 3.

ARTICLE XI NOTICES

11.1 Notices. All notices, demands, consents and reports provided for in this Agreement shall be in writing and shall be given to City or Contractor at the address set forth below or at such other address as they individually may specify thereafter in writing:

City: City of Anaheim
Public Works Department,
200 South Anaheim Boulevard, Suite 276
Anaheim, CA 92805
Attention: Public Works Director

With copies to: City of Anaheim
200 South Anaheim Boulevard, Suite 356
Anaheim, CA 92805
Attention: City Attorney

City of Anaheim
200 South Anaheim Boulevard, Suite 217
Anaheim, CA 92805
Attention: City Clerk

City of Anaheim Fleet and Facility Services
955 South Melrose Street
Anaheim, CA 92805
Attention: Fleet and Facility Services Manager

Property Manager: LPC Transit Management LLC
5 Hutton Centre Drive, Suite 120
Santa Ana, CA 92707
Attention: Kevin Hayes

Contractor: ABM On Site Services-West, Inc.
165 Technology Drive, #100
Irvine, CA 92618
Attention: Michael Keegan and/or Curtis Van Buskirk

Such notice or other communication may be mailed by United States registered or certified mail, return receipt requested, postage prepaid and may be deposited in a United States Post Office or a depository for the receipt of mail regularly maintained by the Post Office. Such notices, demands, consents and reports may also be delivered by hand or by nationally recognized overnight courier service. For purposes of this Agreement, notices will be deemed to have been given upon receipt or rejection of receipt whether given by personal delivery, overnight courier service or the United States mails as provided above.

ARTICLE XII GENERAL PROVISIONS

12.1 No Assignment. Contractor shall not assign or transfer any interest in this Agreement, whether by subcontract, assignment or novation, without the prior written consent of City.

12.2 Non-Conforming Services. The acceptance by City of any non-conforming services under the terms of this Agreement or the foregoing or waiver by City of any of the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of City's right to conforming services or any rights and/or remedies in respect to any subsequent Breach or Default of the terms of this Agreement. In the event of any Default or Breach of this Agreement by Contractor, City shall have the right to pursue any and all rights and remedies available at law or in equity. The rights and remedies of City provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

12.3 Equal Employment Opportunity. Contractor agrees to comply with all federal, state and local laws, resolutions, ordinances, rules, regulations and executive orders pertaining to unlawful discrimination on account of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, sexual orientation, disability, or age. When required by law, Contractor shall furnish a written affirmative action plan.

12.4 Prevailing Wage. In connection with Contractor's performance of the Services, Contractor shall comply with all applicable federal, state and local labor laws and regulations, including without limitation, , as applicable, the requirements to pay prevailing wages under federal law (the Davis Bacon Act, 40 U.S.C. Section 3141, et seq., and the regulations promulgated thereunder set forth at 29 CFR Part 1 (collectively, "Davis Bacon")) and California law (Labor Code Section 1720, et seq.) (and together with Davis Bacon, the "Prevailing Wage Laws"). City and Contractor acknowledge and agree that federal and/or state funding sources used in connection with the construction and operation of ARTIC may trigger compliance with applicable Prevailing Wage Laws.

Contractor shall be solely responsible, expressly or impliedly, for determining and effectuating compliance with all applicable federal, state and local public works requirements, Prevailing Wage Laws, labor laws and standards, and City makes no representation as to the applicability or non-applicability of any federal, state and local laws to ARTIC. Contractor expressly, knowingly and voluntarily acknowledges and agrees that City has not previously represented to Contractor or to any representative, agent or Affiliate of Contractor or any subcontractor(s) hired by Contractor for the performance of Services hereunder, in writing or otherwise, in a call for bids or otherwise, that the Services to be undertaken pursuant to this Agreement is (or is not) a "public work," as defined in Section 1720 of the Labor Code or under Davis Bacon.

Contractor knowingly and voluntarily agrees that Contractor shall have the obligation to provide any and all disclosures or identifications with respect to ARTIC as required by Labor Code Section 1781 and/or by Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation. Contractor shall indemnify, protect, pay for, defend (with legal counsel acceptable to City) and hold harmless the Indemnitees, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorneys' fees, court and litigation costs, and fees of expert witnesses) which, in connection with the provision of the Services hereunder by Contractor, including, without limitation, construction or maintenance of any and all public works (as defined by applicable law), results or arises in any way from any of the following: (i) the noncompliance

by Contractor with any applicable local, state and/or federal law or regulation, including, without limitation, any applicable federal and/or state labor laws or regulations (including, without limitation, if applicable, the requirement to pay state and/or federal prevailing wages); (ii) the implementation of Section 1781 of the Labor Code and/or of Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation; and/or (iii) failure by Contractor to provide any required disclosure or identification as required by Labor Code Section 1781 and/or by Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation. The parties agree that, in connection with the provision of Services under this Agreement, including construction or maintenance (as defined by applicable law or regulation) of ARTIC (to the extent such construction or maintenance work is a required Service hereunder), including, without limitation, any and all public works (as defined by applicable law or regulation), Contractor shall bear all risks of payment or non-payment of prevailing wages under applicable Prevailing Wage Laws, as the same may be amended from time to time, and/or any other similar law or regulation. "Increased costs," as used in this Section, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement.

12.5 Subcontractor Payment. Contractor shall pay any subcontractor within ten days of Contractor's receipt of payment from City for undisputed services provided by the subcontractor. Contractor shall pay interest of 1 ½ percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action. City shall not be liable to pay any penalty or interest payment required by this Section.

12.6 California Public Records Act; Data Practices. All data and documentation collected, created, received, maintained or disseminated for any purpose in the course of Contractor's performance of this Agreement is governed by the California Public Records Act, Government Code Section 6250, et seq. ("CPRA") and any other applicable state statutes, any regulations adopted to implement the CPRA and any federal statutes and regulations on data privacy.

Contractor shall take all reasonable measures to secure the computers or any other storage devices in which City data is contained or which are used to access City data for the ARTIC Site or this Agreement. Additionally, subject to the CPRA, access to City data shall be limited to those persons with a need to know for the provision of services by Contractor. These measures include, but are not limited to, authenticated access to network data storage, use of up-to-date anti-virus software, controlled access to the physical location of the hardware, and the encryption of computers and storage devices, all in accordance with industry standards and City practices.

12.7 Conflict of Interest. Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. Contractor agrees that if, after award, an organizational conflict of interest is discovered, Contractor must make a prompt and full written disclosure to City that includes a description of the action Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, and Contractor does not promptly cure the same, City may, at its discretion, terminate this Agreement. If Contractor was aware of an organizational conflict of interest prior to the award of the date of this Agreement and did not disclose the conflict to City, City may terminate this Agreement for Default without liability.

12.8 Alteration. Any alteration, variation, modification, or waiver of the provisions of this Agreement shall be valid only after it has been reduced to writing and duly signed by both parties.

12.9 Interpretation of Agreement; Venue. This Agreement shall be interpreted and construed according to the laws of the State of California. All litigation regarding this Agreement shall be venued in the Orange County Superior Court or the federal district court for the Central District of California.

12.10 Contractor Certification Regarding Debarment, Suspension, and Responsibility (If applicable). Federal Regulation 45 CFR 92.35 prohibits City from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government.

By signing this Agreement, Contractor certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state or local governmental department or agency; and
2. Have not within a three-year period preceding this Agreement:
 - a. been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract;
 - b. violated any federal or state antitrust statutes; or
 - c. committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
3. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for:

- a. commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction;
 - b. violating any federal or state antitrust statutes; or
 - c. committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
4. Have not had one or more public transactions terminated within the preceding three years for cause or default; and
 5. Shall not knowingly enter into any transaction with a subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and that they will require any subcontractor that receives more than \$100,000 to make a similar certification as set forth herein; and
 6. Are not aware of any information and possess no knowledge that any subcontractor(s) that will perform work pursuant to this Agreement are in violation of any of the certifications set forth above; and
 7. Shall immediately give written notice to City should Contractor come under investigation for allegations of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local government) transaction; violating any federal or state antitrust statutes; or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

12.11 Lobbying. For all contracts involving over \$100,000 in federal funds, Contractor must sign the Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements, attached hereto and made a part of this Agreement as Schedule 10.

12.12 Disadvantaged Business Enterprise. In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), City has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs, Federal Highway Administration" (referred to herein as the "Regulations"). The City's DBE program is available at the following website:

http://www.anaheim.net/depts_servc/pub_works/con_adm/projadvnew.asp

All construction and engineering Services under this Agreement are subject to the Regulations; in addition, other Services may become subject to the Regulations and Contractor shall comply with the Regulations if and to the extent directed to do so by City from

time to time. Specific DBE requirements applicable to this Agreement are set forth in Schedule 6.

12.13 Force Majeure. Subject to the party's compliance with the notice requirements as set forth below, performance by a party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, which may include, without limitation, the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, or acts or failures to act of any public or governmental entity (except that City's acts or failures to act shall not excuse performance of City hereunder). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause.

12.14 Non-Waiver. Nothing in this Agreement shall constitute a waiver by City of any statutory or common law immunities, limits, or exceptions on liability.

12.15 Consents and Approvals. City's consents or approvals may be given only by representatives of City from time to time designated in writing by the City Public Works Director. City's Public Works Director and her duly authorized representative(s) shall have the authority to make approvals and consents, issue interpretations, waive provisions, request issuance of warrants and make payments authorized hereunder, make and execute further agreements and/or enter into amendments of this Agreement on behalf of City so long as such actions do not materially or substantially change or modify the uses permitted on the Site, or materially or substantially add to the costs, responsibilities, or liabilities incurred or to be incurred by City as specified herein. City's Public Works Director (or her designee) is expressly authorized to exercise the Extension Terms provided by Section 2.4 on behalf of City. All material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council. Further, City's Public Works Director shall maintain the right to submit to the City Council for consideration and action any non-material or non-substantive interpretation, waiver or amendment, if in her reasonable judgment she elects to do so.

12.16 Pronouns. The pronouns used in this Agreement referring to City and Contractor shall be understood and construed to apply whether City or Contractor be an individual, co- partnership, corporation or an individual or individuals doing business under a firm or trade name.

12.17 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

12.18 Survival. The provisions of Articles 2, 7, 8, 11, and 13 and Section 5.10 of this Agreement shall survive the expiration or termination of the Term of this Agreement.

12.19 Copies of Agreement; Signatures. The parties agree that (i) an electronic signature shall be considered an original signature, and (ii) a copy of the fully executed Agreement shall be considered an original instrument, and each, together or separately, shall become binding and enforceable as if original and the parties may rely on the same to prove the authenticity of the Agreement. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the party and delivered to the other party.

12.20 Complete Agreement. This Agreement, and the Exhibits and Schedules which are attached to it and are by this reference confirmed as a part of it, constitutes the entire agreement between the parties with respect to the activities described in this Agreement and the Property, and this Agreement (and the Exhibits and Schedules attached hereto) supersedes and takes the place of any and all previous discussions and agreements by and between the parties relating to the subject matter of this Agreement and the Property. Except as set forth in this Agreement or otherwise agreed in writing, in no event shall any party other than the Contractor, City and the Indemnitees have any rights or benefits under this Agreement nor shall any other person or entity have any third party beneficiary status with respect thereto.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

DATE OF EXECUTION:

CITY OF ANAHEIM,
a municipal corporation

By: _____
Natalie Meeks, Director of Public Works

ATTEST:

By: _____
City Clerk of the City of Anaheim

"CITY"

DATE OF EXECUTION:

ABM ONSITE SERVICES-WEST, INC., a
Delaware corporation

By: _____

Printed Name: _____

Title: _____

"CONTRACTOR"

APPROVED AS TO FORM:
MICHAEL R.W. HOUSTON, CITY ATTORNEY

By: _____
Bryn M. Morley, Deputy City Attorney

Dated: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE ARTIC SITE

The real property in the City of Anaheim, County of Orange, State of California, described as follows:

[PARCEL 1 OF PARCEL MAP NO. 98-106, IN THE CITY OF, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 303, PAGES 39 THROUGH 44, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL MINERALS, GAS, OIL, PETROLEUM, NAPHTHA AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER THE ABOVE DESCRIBED STRIP OF LAND, TOGETHER WITH ALL NECESSARY AND CONVENIENT RIGHTS TO EXPLORE FOR, DEVELOP, PRODUCE, EXTRACT, AND TAKE THE SAME, SUBJECT TO THE EXPRESS LIMITATIONS THAT ANY AND ALL OPERATIONS FOR THE EXPLORATION, DEVELOPMENT, PRODUCTION, EXTRACTION, AND TAKING OF ANY OF SAID SUBSTANCES SHALL BE CARRIED ON AT LEVELS BELOW THE DEPTH OF 100 FEET FROM THE SURFACE OF THE ABOVE DESCRIBED STRIP OF LAND, BY MEANS OF MINES, WELLS, DERRICKS, AN/OR OTHER EQUIPMENT FROM SURFACE LOCATIONS ON ADJOINING OR NEIGHBORING LAND LYING OUTSIDE OF THE ABOVE DESCRIBED STRIP OF LAND, AND SUBJECT FURTHER TO THE EXPRESS LIMITATION THAT THE FOREGOING RESERVATION SHALL IN NO WAY BE INTERPRETED TO INCLUDE ANY RIGHT OF ENTRY IN AND UPON THE SURFACE OF THE ABOVE DESCRIBED STRIP OF LAND, AS MORE PARTICULARLY SET FORTH IN THAT CERTAIN DOCUMENT RECORDED MARCH 28, 1961 IN BOOK 5670, PAGE 113 OF OFFICIAL RECORDS.

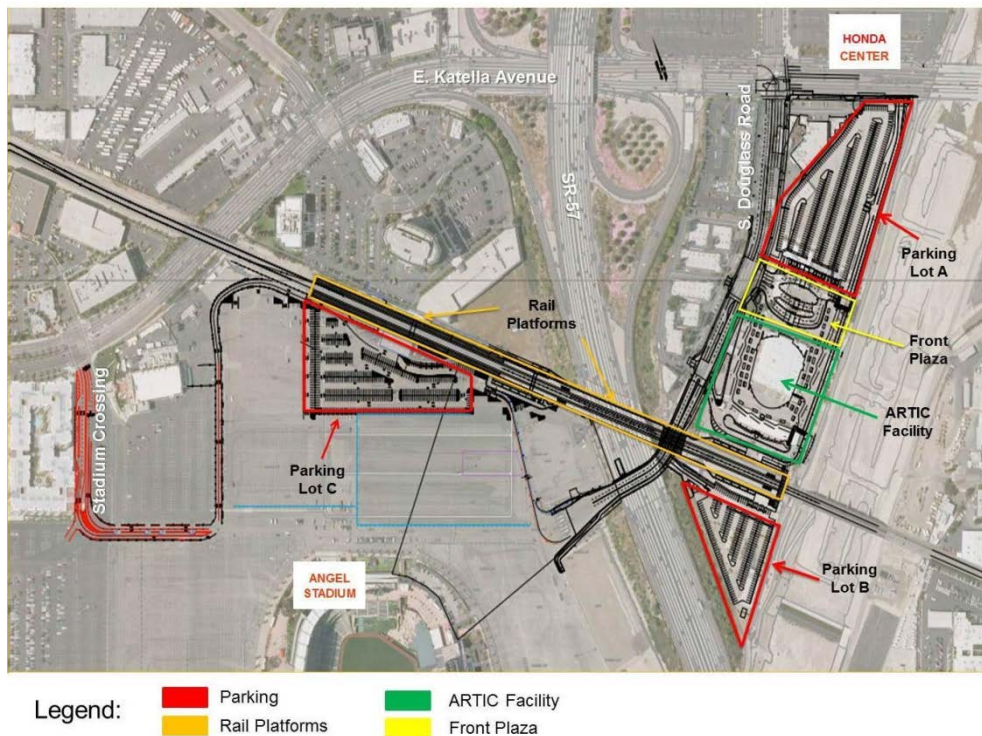
APN: 232 072 03, 232 072 04, AND 386 521 15

EXHIBIT B

ARTIC SITE PLAN/DESCRIPTION OF THE ARTIC SITE

1. ARTIC Site Plan. The ARTIC Site Plan is provided below:

PROJECT SITE PLAN



2. ARTIC Facility. The ARTIC Facility is the primary location of the general property management, leasing, marketing, special event programming, janitorial and security services that are the subject of this Agreement. The ARTIC Facility building is comprised of three levels, as described below.

(a) First Level. The First Level will be used for public circulation through the Public Hall at the north side of the building, for transit provider ticketing/office/baggage space, and for retail spaces to the south, adjacent to the escalators to the Second Level. The First Level is dominated by the 16,700 square foot Public Hall and the 120 foot high transparent vaulted roof, which provides natural light throughout the entire building. There is approximately 7,000 square feet of leasable space, including approximately 3,300 square feet for transit provider ticketing/office/baggage space and approximately 2,400 square feet of retail

commercial space and 1,300 square feet of indoor kiosk space. In addition approximately 9,300 square feet is allocated for (back of house) operations.

(b) Second Level: The Second Level has approximately 8,200 square feet of total leasable restaurant space for two 4,100 square foot restaurants, to be located at the north end of the Second Level on either side of the center passenger corridor. Additionally, approximately 6,600 square feet of management office space for the Contractor and other ARTIC service providers is provided on the Second Level.

(c) Mezzanine Level: The Mezzanine Level has a 4,400 square foot waiting area with charging stations, 164 square feet of leasable retail space, and 1,300 square feet of additional (back of house) operations space. The doorway to the Concourse Bridge is on the Mezzanine Level, providing access to the Rail Platforms from the building.

3. Front Plaza. The passenger drop-off, pick-up and taxi queuing areas and Outdoor Plaza areas are located just outside the front door of the ARTIC Facility, south of parking Lot A. The approximately 90,700 square foot Outdoor Plaza area will be made available for community and other special events (i.e. food trucks, farmer's markets, night markets, concerts, community gatherings, weddings, business receptions) arranged by the Contractor in accordance with this Agreement.

4. Parking Areas. There are three (3) on-site surface parking lots identified as Lot A, Lot B, and Lot C located on the Site, providing a total of 1,082 parking spaces. The total combined surface area of these lots is approximately 370,800 square feet. Fixed gates, security cameras and blue light security phones will be pre-installed at all parking areas. There will also be designated spaces for Electrical Vehicle and (future) Car Share Program vehicles.

(a) Lot A: Lot A is located to the north of the ARTIC Facility building, south of Katella Avenue and east of Douglass Road. Lot A contains 456 parking spaces. Ingress and egress to Lot A is provided along Douglass Road and egress only is provided at Katella Avenue. Lot A will have five (5) fixed gate arms for access control.

(b) Lot B: Lot B is located to the south of the ARTIC Facility building and new rail platforms, east of South Douglas Road. Lot B contains 221 parking spaces. Ingress and egress to Lot B is provided at South Douglass Road, south of East Katella Avenue. Lot B will have one fixed gate arm for access control.

(c) Lot C: Lot C contains 405 spaces and is located to the south of the LOSSAN corridor, west of SR 57 on the Anaheim Angels Stadium site. Ingress and egress to Lot C is provided at Stadium Crossings off of East Katella Avenue and through South Douglass Road. Lot C will have two fixed gate arms for access control. Lot C is currently subject to a long-term lease with the Angels Baseball L.P. ("Angels Stadium Lease"), which obligates the lessee to make 405 parking spaces available for use by Amtrak. Contractor will need to comply with the Angels Stadium Lease, as it may be amended and as specifically directed by the City.

5. Rail Platforms. The Rail Platforms are located to the south of the ARTIC Facility, adjacent to Lot B and Lot C. They include the existing platforms at the current Amtrak Station on the Angels Stadium site and the new platforms to the south of the ARTIC Facility. In total, the Rail Platforms consist of approximately 60,000 square feet and are approximately 1,250 feet in length. There are two platforms, one to the north of the rail tracks and one to the south of the rail tracks, and each platform is approximately 15 feet wide. Stairway and elevator access will be available from the waiting room on the Mezzanine Level in the ARTIC Facility through the Concourse Bridge. The Concourse Bridge, elevators and stairs to the Rail Platforms comprise approximately 13,600 square feet. There is also direct access to the Rail Platforms from parking Lot B, as well as access from parking Lot C through two pedestrian tunnels. Contractor's responsibilities with respect to the operation and maintenance of the Rail Platforms shall be governed by the Station Cooperative Agreement to be entered into by the City and OCTA with respect to ARTIC, as well as this Agreement and all Schedules and Exhibits hereto, including Schedule 4, Performance Specifications.

EXHIBIT C

INCLUDED PERSONAL PROPERTY OF CITY

All real and personal property and/or equipment supplied to Contractor will remain the property of the City of Anaheim. A complete inventory will be developed by the City. All inventory of equipment must be accounted for and returned in operable condition upon the termination of the Contractor agreement.

SCHEDULE 1

TRANSITION AND MOBILIZATION PLAN

ABM will provide a transition plan, and will adhere to the guidelines provided by the City in establishing the following proposed outline for the ARTIC Site in accordance with the Major Maintenance Agreement.

30 Days after Contract Has Been Awarded:

- ABM Transition Team consists of a Facility Manager /Chief Building Engineer is to put in place to facilitate the transition process and administer the transition plan.
- Establish an on-going weekly meeting schedule with City Representatives/Property Management and Transition Team to provide updates and action items through the progression of the transition process.
- Draft Preparation of Routine Maintenance Plan – ABM Transition Team will collaborate with City and Property Management Representatives to create routine preventative maintenance schedule to reflect a safe hazardous free environment at ARTIC Site.
- Draft Preparation of Landscaping Plan – ABM Transition Team will provide a Landscaping Plan/Schedule to address the Landscaping needs and world class expectation of ARTIC project.
- Preparation of other plans as identified in the Major Maintenance Agreement.

60 Days after Contract Has Been Awarded:

- Preparation of a 5/10/15 Year Master Plan – ABM Transition Team will collaborate with City and Property Management Representatives to create a Five, Ten and Fifteen Year Master Plan for all major building systems.
- Preparation of Major Maintenance Plan– ABM Transition Team will collaborate with City and Property Management Representative to create a Major Maintenance Schedule to reflect a safe hazardous free environment.
- Preparation of Preventative Maintenance Plan – ABM Transition Team will collaborate with City and Property Management Representative to create a Preventative Maintenance Schedule to reflect a safe hazardous free environment.
- Preparation of General Administration Licenses, Permits Schedule- ABM Transition Team will provide a schedule of renewal and expiration dates related to mechanical / equipment/ Licenses and Permits and other required regulatory permits.
- Preparation of Inventory - AMB will provide inventory of all equipment/material and supplies related to ARTIC Project (A schedule for inventory reports is to be provided as requested).
- Preparation of Emergency Management and Response Plan – ABM Transition Team will collaborate with a third party consultant, Property Management Team and City representatives to prepare a custom emergency response plan for ARTIC Site.

- Preparation of Financial and Accounting Plan – ABM Accounting Team will collaborate with Property Management and City representatives to establish the financial and accounting plan.
- List of approved Sub-Contractors for ABM – ABM Transition Team will provide a list of all approved sub-contractors authorized to do work for ARTIC Project as it represents Preventative Maintenance and or Major Maintenance.

90 Days after Contract Has Been Awarded:

- Preparation of Utility Analysis Report – ABM Transition Team will collaborate with utility providers, Property Management Team, and City Representatives to draft the utility analysis report for the ARTIC Site.
- Preparation of On-Site Conveyance Plan – ABM Transition Team will collaborate with Property Management Team and City Representative to draft conveyance plan.
- Preparation of Signage, Directional Signage – ABM Transition Team will collaborate with Property Management and City designated signage vendor to establish directional for facility.
- Preparation of Peak Use & Special Event Plan – ABM Transition Team will collaborate with third party marketing firm, Property Management, and City Representatives to prepare for the peak use and special event planning.

Tenant improvement planning – ABM, Property Management and Construction Management will collaborate with tenant, and architect questions, improvement planning when requested.

SCHEDULE 2

STAFFING PLAN

Staffing Benefits:

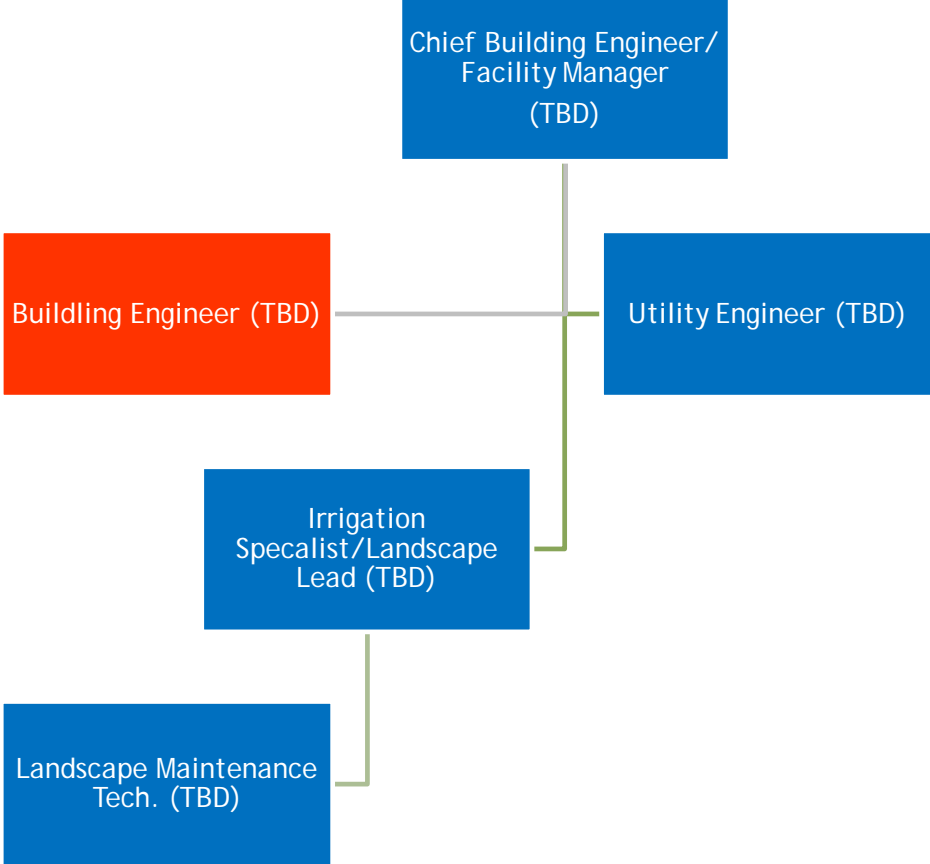
- All ARTIC Maintenance employees will receive Medical & Dental, LTD, Life Insurance, Vacation, and 401k.
- All Landscape employees will receive Medical & Dental, Vacation and 401K.

Office Needs and Preparation.

- 1 Office- Standard size w/land phone line.
- 1 Desk- Standard size w/ office chair and pens, pencils, ruler, etc.
- 1 Desktop Computer w/ keyboard and mouse, all Microsoft Applications and Internet Connection
- 1 Tablet- Microsoft Preferred
- Additional office chairs, shelf/bookcase, file cabinet.

ARTIC Staffing Chart

[< BACK TO CONTENTS](#)



**SCHEDULE 3
FEE STRUCTURE**

A. Management Fee: Owner shall pay to ABM - ONSITE SERVICE – WEST, INC (“ABM”) a Major Maintenance Fee and a Subcontractor Administration Service Fee.

B. Major Maintenance Fee: Owner shall pay to ABM - ONSITE SERVICE – WEST, INC (“ABM”) as Major Maintenance provider a monthly Major Maintenance Fee of (i) \$484 and \$898 for the months of September 2014 and October 2014, respectively and \$1,155 for each subsequent month through June 2015 for a total not to exceed \$10,615, (ii) a monthly fee for Fiscal Year 2015-2016 of \$1,155 per month for total not to exceed \$13,852 for Fiscal Year 2015-16, (iii) a monthly fee for Fiscal Year 2016-2017 of \$1,199 per month for a total not to exceed \$14,384 for Fiscal Year 2016-2017, (iv) a monthly fee for Fiscal Year 2017-2018 of \$1,246 per month for a total not to exceed \$14,952 for Fiscal Year 2017-2018, (v) a monthly fee for Fiscal Year 2018-2019 of \$1,296 per month for a total not to exceed \$15,546 for Fiscal Year 2018-2019, (vi) a monthly fee for Fiscal Year 2019-2020 of \$1,348 per month for a total not to exceed \$16,167 for Fiscal Year 2019-2020.

C. Subcontractor Administration Service Fee: Owner shall pay to ABM a monthly Subcontractor Administration Service Fee of (i) \$498 for the period December 2014 through June 2015, total not to exceed \$3,480, (ii) a monthly fee for Fiscal Year 2015-2016 of \$1,291 per month for a total not to exceed \$15,492 for Fiscal Year 2015-2016, (iii) a monthly fee for Fiscal Year 2016-2017 of \$1,478 per month for a total not to exceed \$17,735 for Fiscal Year 2016-2017, (iv) a monthly fee for Fiscal Year 2017-2018 of \$1,640 per month for a total not to exceed \$19,680 for Fiscal Year 2017-2018, (v) a monthly fee for Fiscal Year 2018-2019 of \$1,739 per month for a total not to exceed \$20,864 for Fiscal Year 2018-2019, (vi) a monthly fee for Fiscal Year 2019-2020 of \$1,800 per month for a total not to exceed \$21,580 for Fiscal Year 2019-2020.

D. Conditions Related to Fees:

i. ABM is not obligated to perform services on the holidays as referenced on the attached schedules which may vary for the different services provided herein. Services on holidays, when requested, shall be charged on an over-time basis. A holiday on the sixth or seventh day of the work week shall be subject to additional charge of a full day at straight time if wages are required to be paid for that day.

ii. Incentive Compensation Payment: Should ABM successfully operate ARTIC Transportation Facility under proposed operating budgets as referenced in Schedule 3, the City of Anaheim shall pay ABM 15% of gross savings as an incentive payable within 30 days after fiscal year end close. This incentive pay will be available beginning in year 2016-2017 of the contract term.

SCHEDULE 4
PERFORMANCE SPECIFICATIONS

[Appears after this page]

Responsibility	Category 1	Category 2	Asset	Service or Activity	Performance Requirement/ Standard	Minimum Frequency	Specific Reporting Requirements
MM	Fire & Life Safety	Emergency Systems	Portable Fire Extinguishers	Inspection / Testing / Tagging	Compliance with all laws and regulations including the California Fire Code and National Fire Protection Association (NFPA).	The maintenance and testing schedules and procedures for the fire alarm and fire detection systems shall be in accordance with the California Fire Code. All inspections shall be conducted by service personnel who meet the qualification requirements of National Fire Protection Association (NFPA) 72 for maintaining, inspecting, testing and current marking/tagging of such systems.	A written record shall be maintained of all inspections and tests and shall be made available to any fire code official.
MM	Fire & Life Safety	Emergency Systems	Portable Fire Extinguishers	Repair/ replacement			
MM	Fire & Life Safety	Emergency Systems	Fire Detection and Alarms	Inspection / Testing			
MM	Fire & Life Safety	Emergency Systems	Fire Detection and Alarms	Repair/ replacement			
MM	Fire & Life Safety	Emergency Systems	Fire Suppression System	Inspection / Testing			
MM	Fire & Life Safety	Emergency Systems	Fire Suppression System	Repair/ replacement			
MM	Fire & Life Safety	Emergency Systems	Common Areas (Service Yard, Terminal & Platform) Smoke & Heat Detectors and Alarm	Inspection / Testing / Tagging	Compliance with EMRP (CDR003) prepared by the Property Manager	All maintenance, replacement or repair work to restore the functionality or operation of a deficient Emergency System or component shall be completed within 1 hour of its detection for service/temporary repairs and within 4 hours for permanent repairs.	
MM	Fire & Life Safety	Emergency Systems	Common Areas (Service Yard, Terminal & Platform) Smoke & Heat Detectors and Alarm	Inspection / Testing / Tagging			
MM	Fire & Life Safety	Emergency Systems	Common Areas (Service Yard, Terminal & Platform) CO2 Detectors and Alarm	Inspection / Testing / Tagging			
MM	Fire & Life Safety	Emergency Systems	Common Areas (Service Yard, Terminal & Platform) CO2 Detectors and Alarm	Inspection / Testing / Tagging			
MM	Fire & Life Safety	Emergency Systems	Emergency Systems	General Management	Compliance with EMRP (CDR003) prepared by the Property Manager		
MM	Fire & Life Safety	Emergency System - Backup Power	Emergency Generator	Inspection / Testing / Tagging	Compliance with all laws and regulations including the California Fire Code and National Fire Protection Association (NFPA).	The maintenance and testing schedules and procedures for fire alarm and fire detection systems shall be in accordance with the applicable codes. All inspections shall be conducted by service personnel who meet the qualification requirements of National Fire Protection Association (NFPA) 72 for maintaining, inspecting, permitting, testing and tagging such systems.	A written record shall be maintained of all inspections and tests and shall be made available to any fire code official.
MM	Fire & Life Safety	Emergency System - Backup Power	Emergency Generator	Fuel			
MM	Fire & Life Safety	Emergency System - Backup Power	Emergency Generator	Maintain			
MM	Fire & Life Safety	Emergency System - Backup Power	Emergency Generator	Repair			
MM	Fire & Life Safety	Emergency System - Backup Power	Emergency Generator	Replace			
MM	Maintenance	External Walls	Curtain Wall	Inspection / Testing	Compliance with all regulations and manufacturers specifications. Ensure all surfaces are free of accumulated bird droppings and regularly cleaned.	Inspections shall be performed in compliance with all regulations and manufacturers specifications, but not exceeding 12 months. All inspections shall be conducted by service personnel who meet the qualification requirements for maintaining, inspecting and testing such systems.	Inspection report showing compliance
MM	Maintenance	External Walls	Curtain Wall	Exterior Cleaning			
MM	Maintenance	External Walls	Curtain Wall	Interior Cleaning			
MM	Maintenance	External Walls	Curtain Wall	Repairs	In the event that repairs are not under warranty, undertake minor repairs to ensure all components are in working order and the overall system is functional. Ensure all surfaces are free of accumulated bird droppings and regularly cleaned.	As needed to ensure the integrity of the curtain wall system. All repairs shall be conducted by service personnel who meet the qualification requirements for maintaining, inspecting and testing such systems.	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	External Walls	Curtain Wall	Sealant Replacement	None unless negotiated with the City		
MM	Maintenance	External Walls	Aluminum louvers and panels mechanical & electrical components	Inspection	Compliance with all regulations and manufacturers specifications.	Inspections shall be performed in compliance with all regulations and manufacturers specifications, but not exceeding 12 months. All inspections shall be conducted by service personnel who meet the qualification requirements for maintaining, inspecting and testing such systems.	Inspection report showing compliance
MM	Maintenance	External Walls	Aluminum louvers and panels mechanical & electrical components	Cleaning			
						Minimum once yearly and as often as necessary to prevent aluminum louvers and panels mechanical & electrical components from accumulating noticeable dirt and grim	Per Operations & Maintenance Plan (CDR001)

City and Contractor acknowledge and agree that the terms of the following Schedule will be discussed and modified as necessary to reflect accurate facts and achievable standards, as part of the mutual review and approval of the Major Maintenance Plan and/or applicable Manager Reports

MM	Maintenance	External Walls	Aluminum louvers and panels mechanical & electrical components	Painting/ Refinish	Repaint and refinish as necessary to ensure that all components are in working order and the overall system is functional.	As necessary to ensure system is functional at all times - this includes the performance of preventative maintenance when appropriate	Inspection report showing compliance
MM	Maintenance	External Walls	Aluminum louvers and panels mechanical & electrical components	Repair	In the event that repairs are not under warranty, undertake repairs necessary to ensure all components are in working order and the overall system is functional.		Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	External Walls	Aluminum louvers and panels	Replacement	None unless negotiated with the City		
MM	Maintenance	External Roof	ETFE Roof System	Inspection	Compliance with all regulations and manufacturers specifications.	Inspections shall be performed in compliance with all regulations and manufacturers specifications, but not exceeding 12 months. All	Inspection report showing compliance
MM	Maintenance	External Roof	ETFE Roof System	Non-destructive moisture inspection			
MM	Maintenance	External Roof	ETFE Roof System	Topside Cleaning	All surfaces shall be cleaned to achieve a condition and appearance free of visible dirt, grime, dust, streaks, water marks, spots, clouding or bird droppings.	Semiannually or more often as negotiated with City	Per Operations & Maintenance Plan (CDR001)
MM	Maintenance	External Roof	ETFE Roof System	Underside Cleaning		Annually	Per Operations & Maintenance Plan (CDR001)
MM	Maintenance	External Roof	ETFE Roof System	Routine maintenance	Undertake any repairs not under warranty necessary to ensure that all components are in working order and the overall system is functional	As needed to ensure the integrity of the ETFE Roof system. All repairs shall be conducted by service personnel who meet the qualification requirements for maintaining, inspecting and such systems.	Inspection report showing compliance
MM	Maintenance	External Roof	ETFE Roof System	Repair Membrane	Per manufactures PM schedule for warrantee		
MM	Maintenance	External Roof	ETFE Roof System	Replace Membrane	Per manufactures PM schedule for warrantee		
MM	Maintenance	External Roof	ETFE Roof System	Repair Panels / Frame	Per manufactures PM schedule for warrantee		
MM	Maintenance	External Roof	ETFE Roof System	Replace Panels / Frame	Per manufactures PM schedule for warrantee		
MM	Maintenance	Surfaces	Exposed concrete surfaces (internal & external)	Inspection	Compliance with all regulations and manufacturers specifications.	The condition of the concrete slab should be inspected by an engineer at a minimum once a year, or more often if a need is identified.	Inspection report showing compliance
MM	Maintenance	Surfaces	Exposed concrete surfaces (internal & external)	Repair	Undertake any repairs necessary to ensure that all exposed concrete surfaces are in good condition and free of cracks, scaling, or spalls. All flooring shall be kept clean, safe and free of hazards in compliance with all regulations.	As needed to ensure the integrity of the concrete surface - this includes the performance of preventative maintenance when appropriate	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Surfaces	Exposed concrete surfaces (internal & external)	Replace	None unless negotiated with the City		
MM	Maintenance	Surfaces	Exposed concrete surfaces (internal & external)	Seal Repair	Undertake any repairs necessary to ensure that all components are in working order and ensure no hazardous conditions are present	As needed to ensure the integrity of the sealant - this includes the performance of preventative maintenance when appropriate	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Surfaces	Exposed concrete surfaces (internal & external)	Seal Replacement	None unless negotiated with the City		
MM	Maintenance	Floors	Terrazzo Flooring	Repair	Undertake any repairs necessary to ensure that all flooring is free of cracks, chips, discoloration or broken fragments. All flooring shall be kept clean, safe and free of hazards. All surfaces shall be slip resistant.	As needed to ensure the integrity of the terrazzo flooring and maintain LEED Platinum green cleaning requirements	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Floors	Terrazzo Flooring	Isolated Replacement	In the event that repairs are not cost effective or sections continuously require undue repair and components are not under warranty - undertake isolated replacements to ensure the integrity of the flooring.		
MM	Maintenance	Floors	Ceramic Tile	Repair	Undertake any repairs necessary to ensure that all tiles are free of cracks, chips, discoloration or broken or missing fragments. All flooring shall be kept clean, safe and free of hazards. All surfaces shall be slip resistant.	As needed to ensure the integrity of the ceramic tile flooring and maintain LEED Platinum green cleaning requirements	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Floors	Ceramic Tile	Replace	In the event that repairs are not cost effective or sections continuously require undue repair - undertake replacements to ensure the integrity of the flooring. Maintain adequate stores of all supplies such as carpet and ceramic tiles, so that replenishment of spent items can occur in a timely, compliant manner.		
MM	Maintenance	Floors	Carpet Tiles	Replace	Replace in kind any worn, soiled or damaged carpet tiles to ensure tiles are free of odors, dirt or grime. All floor surfaces shall have a uniform appearance without unsightly build-up. Maintain adequate stores of all supplies such as carpet and ceramic tiles, so that replenishment of spent items can occur in a timely, compliant manner.	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Preventative Maintenance	Columns	Structural Column	Inspection	Compliance with all regulations and manufacturers specifications.	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Preventative Maintenance	Columns	Structural Column	Maintenance			

MM	Maintenance	Stairs	Glass Railing	Repair	Undertake any repairs necessary to ensure that all glass panels and railings are free of cracks, chips or other defects. All glass surfaces shall be kept clean, safe and free of hazards.	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Stairs	Glass Railing	Replace	None unless negotiated with the City		Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Stairs	Steps, Step Support and Treads	Repair	Undertake any repairs necessary to ensure that all steps, step supports and/ or treads are clean safe and free of hazards. All maintenance and repairs shall be in compliance with all regulations and manufacturers specifications	Immediate corrective measures should be undertaken of any deteriorated steps, step support or treads	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Stairs	Steps, Step Support and Treads	Replace	None unless negotiated with the City	Refer to specific KPI	
MM	Maintenance	Internal Walls	Metal Stud and Interior Partitions	Spot Refinish/ Repaint	All surfaces shall be refinished to achieve a condition and appearance free of dirt, grime, streaks, marks, or spots.	As needed	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Internal Walls	Metal Stud and Interior Partitions	Complete Refinish/ Repaint		Once every three years	
MM	Maintenance	Internal Walls	Metal Stud and Interior Partitions	Repair	Undertake any repairs necessary to ensure that all components are in working order and ensure no hazardous conditions are present	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Internal Walls	Metal Stud and Interior Partitions	Replace	In the event that repairs are not cost effective or components continuously require undue repair and components are not under warranty - undertake replacements to ensure all components are in working order and the overall system is functional		
MM	Maintenance	Internal Walls	Interior Metal Wall Panels	Spot Refinish/ Repaint	All surfaces shall be refinished to achieve a condition and appearance free of dirt, grime, streaks, marks, or spots.	As needed	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Internal Walls	Interior Metal Wall Panels	Complete Refinish/ Repaint		Once every three years	
MM	Maintenance	Internal Walls	Interior Metal Wall Panels	Repair	Undertake any repairs necessary to ensure that all components are in working order and ensure no hazardous conditions are present	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Internal Walls	Interior Metal Wall Panels	Replace	In the event that repairs are not cost effective or components continuously require undue repair and components are not under warranty - undertake replacements to ensure all components are in working order and the overall system is functional.		
MM	Maintenance	Internal Walls	Common Area - Interior clear glass	Repair	Undertake any repairs necessary to ensure that all glass paneling and railings are free of cracks, chips or other defects. All glass surfaces shall be kept clean, safe and free of hazards.	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Internal Walls	Common Area - Interior clear glass	Replace	None unless negotiated with the City		
MM	Maintenance	Internal Walls	Interior wood veneer panel	Spot Refinish/ Repaint	All surfaces shall be refinished to achieve a condition and appearance free of dirt, grime, streaks, marks, or spots	As needed	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Internal Walls	Interior wood veneer panel	Complete Refinish/ Repaint		Once every three years	
MM	Maintenance	Internal Walls	Interior wood veneer panel	Repair	Undertake any repairs necessary to ensure that all surfaces shall have a condition and appearance free of dirt, mold, chips or cracks and ensure no hazardous conditions are present	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Internal Walls	Interior wood veneer panel	Replace	In the event that repairs are not cost effective or components continuously require undue repair, undertake replacements to ensure that all surfaces are rendered to as new condition, or at least to a condition where defects or cracks are no longer visible		
MM	Maintenance	Internal Walls	Aluminum Glass Door	Repair	Undertake any repairs necessary to ensure that all components are in working order.	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Internal Walls	Aluminum Glass Door	Replace	In the event that repairs are not cost effective or components continuously require undue repair and components are not under warranty - undertake replacements to ensure all components are in working order and the overall system is functional		
MM	Maintenance	Motorized Doors and Sensors	Sliding Glass Doors including motion sensors	Maintain / Repair	Undertake any repairs necessary to ensure that all components are in working order and ensure no hazardous conditions are present	As necessary to ensure the integrity of the Motorized Doors and Sensors	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Motorized Doors and Sensors	Sliding Glass Doors including motion sensors	Replacement	In the event that repairs are not cost effective or components continuously require undue repair and components are not under warranty - undertake replacements to ensure all components are in working order and the overall system is functional		
MM	Maintenance	Ceilings	Ceiling Finish	Repair	Undertake any repairs necessary to ensure that all components are in working order and ensure no hazardous conditions are present	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Ceilings	Ceiling Finish	Replace	In the event that repairs are not cost effective or components continuously require undue repair and components are not under warranty - undertake replacements to ensure all components are in working order and the overall system is functional		
MM	Maintenance	Power and Distribution	Power and Distribution System	Inspection/ Maintenance	The power and distribution systems shall be inspected and maintained in accordance with applicable laws and manufacturer's specifications and parameters defined in the original designs.	Inspections shall be performed at intervals specified by the manufacturer/ supplier, but not exceeding 12 months and shall be performed by a licensed person. Maintenance shall be performed as necessary to ensure system is functional at all times - this includes the performance of preventative maintenance when appropriate	Inspection report showing compliance

MM	Maintenance	Power and Distribution	Power and Distribution System	Repair	Undertake any repairs necessary to ensure that all components are in working order and the overall system is functional		Per Operations and Maintenance Plan (CDR001).
MM	Maintenance	Power and Distribution	Power and Distribution System	Replacement	In the event that repairs are not cost effective or components continuously require undue repair and components are not under warranty undertake replacements to ensure all components are in working order and the overall system is functional	As necessary to ensure services are provided at all times - this includes the performance of preventative maintenance, repair or replacement when appropriate	Records of any non-functioning power & distribution components
MM	Maintenance	Power and Distribution	Power and Distribution System	General management	The PM shall contract for and ensure the availability of electricity; and shall monitor energy use and issue user fees. The MM Provider shall maintain the power and distribution systems, and ensure all the components are in working order. The MM Provider shall also provide access without notice to Anaheim Public Utilities and other relevant bodies when required.	As necessary to ensure services are provided at all times. Refer to KPIs for treatment of unavailability	Monthly compliance report
MM	Maintenance	Power and Distribution	Power and Distribution System	Special Events	The MM Provider shall also provide temporary electrical distribution systems for events such as seasonal decorative lighting, special outdoor events, and temporary project hook-ups.	Refer to Contract for specific details	
MM	Maintenance	Power and Distribution	Uninterrupted Power Supply UPS	Test	Responsibility of the PM (no MM obligations)		
MM	Maintenance	Power and Distribution	Uninterrupted Power Supply UPS	Maintain			
MM	Maintenance	Power and Distribution	Uninterrupted Power Supply UPS	Repair			
MM	Maintenance	Power and Distribution	Uninterrupted Power Supply UPS	Replace			
MM	Maintenance	Lighting	Lighting System (Architectural, Flood, Ceiling, Enclosed Area and Parking Area Lighting)	Inspection	All lighting systems shall be maintained in accordance with all regulations and manufacturers specification including APTA Security Lighting for Transit Passenger Facilities Guidance (SS-SIS-RP-001-10)	Monthly night time visual inspections	Inspection report showing compliance Records of any non-functioning components or luminaires
MM	Maintenance	Lighting	Lighting System (Architectural, Flood, Ceiling, Enclosed Area and Parking Area Lighting)	Repair Fixtures			
MM	Maintenance	Lighting	Lighting System (Architectural, Flood, Ceiling, Enclosed Area and Parking Area Lighting)	Replace Fixtures			
MM	Maintenance	Lighting	Lighting System (Architectural, Flood, Ceiling, Enclosed Area and Parking Area Lighting)	Replace Luminaires			
MM	Maintenance	Lighting	ETFE Roof Lighting System	Inspection	Compliance with all regulations and manufacturers specifications.	Monthly night time visual inspections	Inspection Report showing compliance
MM	Maintenance	Lighting	ETFE Roof Lighting System	Repair	Undertake any repairs not under warranty necessary to ensure that all components are in working order and the overall system is functional	As necessary	Records of any non-functioning components or luminaires
MM	Maintenance	Lighting	ETFE Roof Lighting System	Replace	In the event that repairs are not cost effective or components continuously require undue repair and components are not under warranty undertake replacements to ensure all components are in working order and the overall system is functional		
MM	Maintenance	Displays / Real Time Message Boards	Stationary Variable Message Signs / Information Displays & Other ITS	Repairs excluding AMTRAK and Metrolink designated Variable Message Signs, Information Displays & Other ITS systems.	Undertake any repairs necessary to ensure that all components (hardware & software) are in working order and the overall system is functional. Coordinate with the PM as necessary to implement any complex/ software repairs.	As necessary to ensure services are provided at all times - this includes the performance of preventative maintenance, repair or replacement when appropriate	Per Operations and Maintenance Plan (CDR001). Records of any non-functioning power & distribution components
MM	Maintenance	Displays / Real Time Message Boards	Stationary Variable Message Signs / Information Displays & Other ITS	Replacement excluding AMTRAK and Metrolink designated Variable Message Signs, Information Displays & Other ITS systems.	In the event that repairs are not cost effective or components continuously require undue repair and components are not under warranty undertake replacements to ensure all components are in working order and the overall system is functional. Coordinate with the PM as necessary to implement any replacement.		
MM	Maintenance	Displays / Real Time Message Boards	Stationary Touch Screens	Repair excluding AMTRAK and Metrolink designated Variable Message Signs, Information Displays & Other ITS systems.	Undertake any repairs necessary to ensure that all components are in working order and the overall system is functional. Coordinate with the PM as necessary to implement any complex systems/ software repairs.		Per Operations and Maintenance Plan (CDR001). Records of any non-functioning power & distribution components
MM	Maintenance	Displays / Real Time Message Boards	Stationary Touch Screens	Replacement excluding AMTRAK and Metrolink designated Variable Message Signs, Information Displays & Other ITS systems.	In the event that repairs are not cost effective or components continuously require undue repair and components are not under warranty undertake replacements to ensure all components are in working order and the overall system is functional. Coordinate with the PM as necessary to implement any replacement of complex systems/ software.	As necessary to ensure services are provided at all times - this includes the performance of preventative maintenance, repair or replacement when appropriate	Per Operations and Maintenance Plan (CDR001). Records of any non-functioning power & distribution components
MM	Maintenance	HVAC	HVAC System	Inspection	Compliance with all regulations, manufacturers specification including ASHRAE Standard 62 and ASHRAE Standard 111.1988 and addendums to the standards.	Monthly inspections at a minimum by qualified/certified staff	Inspection report showing compliance
MM	Maintenance	HVAC	HVAC System	Routine Maintenance / Repair	All components of the HVAC system shall be operated and maintained to provide maximum	Maintenance as necessary to ensure system is functional at all times during operating hours - this includes the performance of preventative maintenance when appropriate	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	HVAC	HVAC System	Replacement			None unless negotiated with the City
MM	Maintenance	HVAC	HVAC System	General Management	The PM shall manage, control and monitor the Facility Building Management System (BMS) including ventilation, filtration and climate control in accordance with Title 24, Part 6, Building Energy Efficiency Standards. In the event of any system or component failure the PM shall notify the MM Provider, triggering immediate response.	As necessary to ensure services are provided at all times. Refer to KPIs for treatment of unavailability	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Elevators	Elevators (Passenger & Freight)	Inspection / Testing	Compliance with all regulations and manufacturers specifications. The MM shall implement and manage all permits associated with state certification.	Inspections shall be performed in accordance with the California Electric Code and ASME Safety Code for Elevators and Escalators.	Inspection report showing compliance

MM	Maintenance	Elevators	Elevators (Passenger & Freight)	Repair	Undertake any repairs not under warranty necessary to ensure that all components are in working order and the system is in compliance with all regulations and manufacturers specifications including the California Code of Regulations, Title 8, Division 1, Chapter 4, Subchapter 6, Elevator Safety Orders and ASME Safety Code for Elevators and Escalators.	As necessary to ensure system is functional at all times - this includes the performance of preventative maintenance when appropriate Refer to relevant KPIs	Per Operations and Maintenance Plan (CDR001) All non compliance should be reported to the City with five (5) days of the event
MM	Maintenance	Elevators	Elevators (Passenger & Freight)	Replacement		None unless negotiated with the City	
MM	Maintenance	Escalators	Internal Escalators	Inspection / Testing	Compliance with all regulations and manufacturers specifications. The MM shall implement and manage all permits associated with state certification.	Inspections shall be performed in accordance with the California Electric Code and ASME Safety Code for Elevators and Escalators.	Inspection report showing compliance
MM	Maintenance	Escalators	Internal Escalators	Maintain / Repair	Undertake any repairs not under warranty necessary to ensure that all components are in working order and the system is in compliance with all regulations and manufacturers specifications including the California Code of Regulations, Title 8, Division 1, Chapter 4, Subchapter 6, Elevator Safety Orders and ASME Safety Code for Elevators and Escalators.	As necessary to ensure system is functional at all times - this includes the performance of preventative maintenance when appropriate Refer to relevant KPI	Per Operations and Maintenance Plan (CDR001) All non compliance should be reported to the City with five (5) days of the event
MM	Maintenance	Escalators	Internal Escalators	Replacement		None unless negotiated with the City	
MM	Maintenance	Sewer	Sewer System	Inspections	Compliance with all laws and regulations including the NPDES permit requirements, Clean Water Act requirements and LEED O&M specifications.	Annually	
MM	Maintenance	Sewer	Sewer System	Maintain / Repair	The MM Provider shall be responsible for the sewer systems within the boundary of the Project Site. The MM Provider shall maintain the system in a fully functioning condition so as to maintain the design drainage flow at all times and in accordance with all regulations and manufacturers specifications.	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Sewer	Sewer System	Replace		None unless negotiated with the City	
MM	Maintenance	Water	Water System	Inspections	Compliance with all laws and regulations including the NPDES permit requirements, Clean Water Act requirements and LEED O&M specifications.	Annually	
MM	Maintenance	Water	Water System	Maintain / Repair	The MM Provider shall be responsible for the water systems within the boundary of the Project Site. The MM Provider shall maintain the system in a fully functioning condition in accordance with all regulations and manufacturers specifications.	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Water	Water System	Replace		None unless negotiated with the City	
MM	Maintenance	Gas	Gas Mains and Meters	Maintain / Repair	The PM shall contract for and ensure the availability of gas; and shall monitor energy use and issue user fees. The MM Provider shall also provide access without notice to Anaheim Public Utilities and other relevant bodies when required.	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Gas	Gas Mains and Meters	Replace		None unless negotiated with the City	
MM	Maintenance	Rest Rooms	Restroom Facilities (toilets, urinals, sinks faucet etc.)	Maintain / Repair	Undertake any repairs necessary to ensure that all restroom facilities are free of cracked or chipped surfaces or defect toilets, urinals, sinks faucet etc. All areas shall be kept clean, safe and free of visual imperfections.	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Rest Rooms	Restroom Facilities (toilets, urinals, sinks faucet etc.)	Replace	In the event that repairs are not cost effective or components continuously require undue repair a undertake replacements to ensure all components are in working order and the overall system is functional. All surfaces shall be kept clean, safe and free of hazards.	Refer to specific KPI	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Support Facilities	Back of House Kitchen/ Break room	Maintain / Repair	Undertake any repairs necessary to ensure that all components are in working order and the overall system is functional	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Loading Dock / Goods Conveyance	Loading Dock	Painting	Loading dock area shall be repainted in compliance with all applicable standards to ensure surfaces are free of dirt, marks, graffiti, or peeling paint. All areas shall be kept clean, safe and free of visual imperfections.	Annually	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Loading Dock / Goods Conveyance	Loading Dock	Maintain / Repair	The MM Provider shall undertake any repairs necessary to ensure area is safe and free of hazards.	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Ticketing Office	Customer Interface Window	Maintain / Repair	Undertake any repairs necessary to achieve a condition and appearance free of cracks, chips or broken surfaces and ensure that all surfaces are rendered to as new condition, or at least to a condition where defects or cracks are no longer visible.	All damaged or unsafe surfaces will be rectified within 8 hours of notification from PM	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Ticketing Office	Customer Interface Window	Replace	In the event that repairs are not cost effective or elements continuously require undue repair - undertake replacements to achieve a condition and appearance free of cracks, chips or broken surfaces.		
MM	Maintenance	Miscellaneous	Public Seating / Benches	Maintain / Repair	Undertake any repairs necessary to achieve a condition and appearance free of graffiti, cracks, chips or broken surfaces. All surfaces shall be rendered to as new condition, or at least to a condition where defects, graffiti or cracks are no longer visible.	All damaged or unsafe public seating will be rectified within 8 hours of notification from PM	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Miscellaneous	Public Seating / Benches	Replace	In the event that repairs are not cost effective or elements continuously require undue repair - undertake replacements to achieve a condition and appearance free of cracks, chips or broken surfaces.		
MM	Maintenance	Miscellaneous	AMTRAK Baggage Tunnel	Inspection	The MM provider shall conduct inspections in compliance with all regulations and manufacturers specifications. Ensure coordination with AMTRAK during inspections and maintenance to avoid any disruption of operations.	Pedestrian tunnels shall be inspected annually by service personnel who meet the qualification requirements for maintaining, inspecting and testing such systems.	Inspection report showing compliance

MM	Maintenance	Miscellaneous	AMTRAK Baggage Tunnel	Maintain/ Repair	Undertake any repairs necessary to ensure that all components are in working order and the overall system is functional. Ensure coordination with AMTRAK during inspections and maintenance to avoid any disruption of operations.	As necessary to ensure system is functional at all times - this includes the performance of preventative maintenance when appropriate. All damaged or unsafe surfaces will be rectified within 24 hours of detection.	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Miscellaneous	Pedestrian Tunnels	Inspection	The MM provider shall conduct inspections in compliance with all regulations and manufacturers specifications.	Pedestrian tunnels shall be inspected annually by service personnel who meet the qualification requirements for maintaining, inspecting and testing such systems.	Inspection report showing compliance
MM	Maintenance	Miscellaneous	Pedestrian Tunnels	Maintain/ Repair	Undertake any repairs necessary to ensure that all components are in working order and the overall system is functional	As necessary to ensure system is functional at all times - this includes the performance of preventative maintenance when appropriate	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Paved Pedestrian Zones	Maintain Condition	Maintain / Repair	Compliance with all laws and regulations including the ASTM E1889-97(2002) Standard Guide for Pavement Management Implementation.	Visual inspection by a qualified engineer on a weekly basis at a minimum and as often as necessary. Potholes present a tripping hazard and should be repaired immediately.	Inspection report showing compliance and Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Roadway and Parking Surfaces, Curb and Gutter	Bollards	Maintain / Repair	Undertake any repairs necessary to ensure that all components are in working order and the overall system is functional and in compliance with all regulations and manufacturers specifications.	Inspection Semiannual (twice a year), maintenance/ repair work as necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Signage/ Directional Signage	Signage (all other traffic)	Inspection	The MM Provider shall adequately maintain, repair and replace in-kind informational, warning, guide and directional signage as necessary. All signage must comply with relevant standards including California Building Code, Title 24, 2012 California Sign	All signage should be regularly inspected at least once a week and more often if necessary and any damaged, unclean, illegible, obscured, or missing signage should be immediately reported and repaired.	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Signage/ Directional Signage	Signage (all other traffic)	Maintain / Repair			
MM	Maintenance	Signage/ Directional Signage	Signage (all other traffic)	Replace			
MM	Maintenance	Bicycles	Bicycle Racks & Lockers	Maintain / Repair	Undertake any repairs necessary to ensure that all components are in working order and the overall system is functional.	As Necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Bicycles	Bicycle Racks & Lockers	Replace	None (unless negotiated with City)		
MM	Maintenance	Physical Assets	Bus shelters	Maintain / Repair	Undertake any repairs necessary to achieve a condition and appearance free of graffiti, damage or broken surfaces. All surfaces shall be rendered to as new condition, or at least to a condition where defects and graffiti are no longer visible.	All damaged or unsafe bus shelters will be rectified within 24 hours of notification from PM	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Physical Assets	Bus shelters	Replace	None unless negotiated with City		
MM	Maintenance	Site Furniture / Architectural Elements	Public Art and Sculpture	Cleaning	All surfaces shall be free of dust, debris, dirt, marks, or foreign matter - and kept clean and free of graffiti.	Quarterly power washing or as often needed to maintain surface conditions	
MM	Maintenance	Site Furniture / Architectural Elements	Public Art and Sculpture	Maintain / Repair	Undertake any repairs necessary to achieve a condition and appearance free of graffiti, damage or broken surfaces. All surfaces shall be rendered to as new condition, or at least to a condition where defects and graffiti are no longer visible.	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Site Furniture / Architectural Elements	Public Art and Sculpture	Replace	None unless negotiated with the city		
MM	Maintenance	Site Furniture / Architectural Elements	Chain link fencing	Maintain / Repair	Undertake any repairs necessary to ensure the safety and security of the Facility and Project Site	As necessary to ensure system is functional at all times - this includes the performance of preventative maintenance when appropriate	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Site Furniture / Architectural Elements	Chain link fencing	Replace	In the event that repairs are not cost effective or continuously require undue repair - undertake replacements to ensure the safety and security of the Facility and Project Site		
MM	Maintenance	Site Furniture / Architectural Elements	Flag Pole and pulley system	Flag Pole Inspection	Compliance with all regulations and manufacturers specifications.	Biannually	Inspection report showing compliance
MM	Maintenance	Site Furniture / Architectural Elements	Flag Pole and pulley system	Flag replacement	Replace flags as necessary to ensure flags are not torn and free of dirt, marks, or graffiti.	As necessary	Inspection report showing compliance
MM	Maintenance	Site Furniture / Architectural Elements	Flag Pole and pulley system	Maintain / Repair	Undertake any repairs necessary to ensure that all components are in working order and the overall system is functional.	As necessary	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Site Furniture / Architectural Elements	Flag Pole and pulley system	Replace	None unless negotiated with the city		

MM	Maintenance	Landscaping	Planted Areas (e.g. flower beds)	Care and Maintenance	The MM provider shall provide landscape management and maintenance of turf, trees, palm trees, shrubs, ground covers, vines and annual beds, gravel areas, irrigation systems, weeds and litter control in the hardscape and landscaped areas within the boundary of the Project Site. The maintenance shall include, but not limited to the replacement of mulch, pruning, tree trimming, litter removal, wind-blown debris, irrigation maintenance/ repair, renovating landscaped and turf areas, aerify turf, fertilization, surface tree root removal, weed and outside pest control and hardscape cleaning. All work shall be performed in compliance with all regulations and manufacturers requirements and ensure LEED O&M compliance as appropriate.	Daily	Per Landscape & Maintenance Plan
MM	Maintenance	Landscaping	Planted Areas (e.g. flower beds)	Replanting			
MM	Maintenance	Landscaping	Trees and Shrubs	Care and Maintenance			
MM	Maintenance	Landscaping	Trees and Shrubs	Replanting			
MM	Maintenance	Landscaping	Management	Develop Landscaping Plan and Guidelines			
MM	Maintenance	Landscaping	Management	Watering and Fertilizing			
MM	Maintenance	Landscaping	Management	Procurement of services and plants			
MM	Maintenance	Landscaping	Management	External (non building) Pest control			
MM	Maintenance	Retaining Walls and structures	Management	Inspection	The MM Provider shall conduct inspections in compliance with all regulations and manufacturers recommendations.	The retaining walls and associated structures shall be inspected biannually by service personnel who meet the qualification requirements for maintaining, inspecting and testing such systems.	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Retaining Walls and structures	Management	Maintain / Repair	None unless negotiated with the city		
MM	Maintenance	Retaining Walls and structures	Management	Replace			
MM	Maintenance	Site Maintenance	Fences and Railings	Inspection	Compliance with all regulations and manufacturers specifications.	Monthly	Inspection report showing compliance
MM	Maintenance	Site Maintenance	Fences and Railings	Painting	Fences and railings shall be repainted in compliance with all applicable standards to ensure surfaces are free of rust or peeling paint.	Annually	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Site Maintenance	Fences and Railings	Repair	Undertake any repairs necessary to ensure the safety and security of the Facility and Project Site	As necessary to ensure system is functional at all times - this includes the performance of preventative maintenance when appropriate	
MM	Maintenance	Site Maintenance	Fences and Railings	Replacement	None unless negotiated with the City		
MM	Maintenance	Site Maintenance	Pavement Marking	Painted Areas excluding Thermoplastic	Line marking, painting and striping on all roadway and parking surfaces that have become faded or are no longer clearly visible for any other reason shall be repainted as needed.	Biannual visual inspection and a full annual repaint	Inspection report showing compliance
MM	Maintenance	Site Maintenance	Pavement Marking	All other areas		Quarterly visual inspection Refer to specific KPI	Inspection report showing compliance
MM	Maintenance	Site Maintenance	Public Seating / Benches	Painting	Painted items such as benches, walls etc. shall be repainted in compliance with all applicable standards to ensure surfaces are free of chips, rust or peeling paint.	Annually	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Site Maintenance	Public Seating / Benches	Repair	Undertake any repairs necessary to ensure that all components are safe, clean and in working order and the overall system is functional.	As necessary to ensure system is functional at all times - this includes the performance of preventative maintenance when appropriate	
MM	Maintenance	Site Maintenance	Public Seating / Benches	Replacement	None unless negotiated with the City		
MM	Maintenance	Signage/ Directional Signage	Signage/ Directional Signage	Inspection	The MM Provider shall adequately maintain, repair and replace in-kind informational, warning, guide and directional signage as necessary. Any damaged, unclean, illegible, obscured, or missing signage shall be repaired or replaced.	Weekly Inspection Refer to specific KPI	Inspection report showing compliance
MM	Maintenance	Signage/ Directional Signage	Signage/ Directional Signage	Repair		As necessary to ensure system is functional at all times - this includes the performance of preventative maintenance when appropriate	Signage, Directional Signage & Way finding Plan (CDR008)
MM	Maintenance	Signage/ Directional Signage	Signage/ Directional Signage	Replacement			
MM	Maintenance	Roadway and Parking Surfaces, Curb and Gutter	Pavement Maintenance	Inspection/ Condition Assessment	A visual inspection of the pavement surfaces and surrounding components at each parking lot shall be conducted. A condition assessment of the pavement surfaces and surrounding components (such as curbs, concrete parking bumpers etc.) at each parking lot shall be conducted by a qualified engineer in compliance with ASTM D6433 Standard practice for roads and parking lots pavement condition index surveys.	Visual Inspection: Weekly Condition Assessment: Once every four years	Inspection report showing compliance
MM	Maintenance	Roadway and Parking Surfaces, Curb and Gutter	Pavement Maintenance	Pot Hole Repair	All roadway and parking surfaces shall be maintained in accordance with ASTM E1889-97(2002) Standard Guide for Pavement Management Implementation. All roadway and parking surfaces shall have a smooth and quiet surface course free from defects and shall be kept clean, safe and free of hazards.	All temporary pothole repair work to the pavement surface shall be completed within 1 hour of its detection and within 3 days for permanent repairs.	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Roadway and Parking Surfaces, Curb and Gutter	Pavement Maintenance	Crack Repair		All temporary crack repair work to the pavement surface shall be completed within 1 hour of its detection and within 14 days for permanent repairs.	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Roadway and Parking Surfaces, Curb and Gutter	Pavement Maintenance	Sealcoating		Sealcoating shall be applied per manufacturer's instructions and at manufacturer's recommended intervals, with cracks greater than ¼ inch in width filled prior to sealcoating.	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Roadway and Parking Surfaces, Curb and Gutter	Pavement Maintenance	Resurfacing	None unless negotiated with the City		
MM	Maintenance	Roadway and Parking Surfaces, Curb and Gutter	Pavement Maintenance	Reconstruction	None unless negotiated with the City		
MM	Maintenance	Roadway and Parking Surfaces, Curb and Gutter	Drainage Maintenance	Cleaning	All drainage structures shall be kept free of debris and shall be cleaned to ensure no pooling of water in drainage structures.	Annually	Per Operations and Maintenance Plan (CDR001)
MM	Maintenance	Roadway and Parking Surfaces, Curb and Gutter	Drainage Maintenance	Standing Water	In the event of standing water occurs, the MM Provider shall immediately inspect drainage structures and provide corrective maintenance if necessary	Continuously	Per Operations and Maintenance Plan (CDR001)

SCHEDULE 5

KEY PERFORMANCE INDICATORS

[Appears after this page]

Ref	Service or Activity	Apportionment/ Financial Responsibility	Performance Requirement/ Standard	Maximum Time for Detection	Response Time
1	Graffiti Identification & Removal	MM	Finished surfaces shall be free of graffiti, etching, stickers, gum, stains and any markings other than the original state.	NA	Upon notification by PM of graffiti remediation work order, MM Provider shall complete remediation action within 24 hours unless a particular replacement part is not readily available, in which case replacement is required within 48 hours of receipt of the relevant replacement part(s).
2	Identification & Remediation of Property Damage	MM	The PM shall patrol all areas of the Project Site to identify, report and self perform or arrange remediation for damage to or replacement needs for any component of the ARTIC Facility and Site.	NA	Upon notification by PM of any work order for repair or replacement, the MM Provider shall complete remediation action in accordance with relevant performance response time; or within 24 hours for readily available parts; or if parts are not readily available, replacement within 48 hours of receipt of the relevant replacement part(s)
3	Escalator Functionality	MM	Response to a failure	NA	1 Hour from identification or notification
4	Public Elevator Functionality	MM	Response to a failure with people inside	NA	Response within 1 Hour of identification or notification. Functionality to be restored immediately if parts available, or in the event of mechanical failure within 1 day of receipt of repair parts.
5	Public Elevator Functionality	MM	Response to a failure without people inside	NA	4 Hours from identification or notification
6	Freight Elevator Functionality	MM	Response to a failure without people inside	NA	4 Hour from identification or notification
7	Freight Elevator Functionality	MM	Response to a failure with people inside	NA	1 Hours from identification or notification
8	Power (Power and Distribution system failure)	MM	Response to a failure	NA	Immediate response, resolved within four hours or continuous work performed until resolution (Coordination of Plan to Correct with Owner is Necessary)
9	HVAC (System Failure)	MM	Server rooms shall remain below manufacturer temperature limits at all times	NA	Immediate response, resolved within four hours or continuous work performed until resolution(Coordination of Plan to Correct with Owner is Necessary)
10	Trip & Safety hazards - broken sidewalk or steps/ step treads or glass	MM	Remediation of any trip hazards that present a safety risk	Upon regular scheduled inspection or notification from the PM	Immediate action to mark trip hazard with appropriate signage or bollards. Remediation within 24 hours of identification or notification by the PM
11	Lighting System & Luminaire Replacement	MM	Response to any defective, broken or damaged lighting system components including luminaires	NA	Monthly replacement of all non functioning components identified in line with the monthly inspection or sooner if a specific complaint is received from tenants / customers (via the PM).
12	Emergency Generator	MM	All emergency repairs including any defective, worn, broken or damaged components shall be identified by the MM Provider. MM provider must comply with all Standards	NA	Immediate response, resolved within four hours or continuous work performed until resolution (Coordination of Plan to Correct with Owner is Necessary)
13	Sewer, Water and Gas	MM	Response to a failure or blockage	NA	Immediate response, resolved within four hours or continuous work performed until resolution(Coordination of Plan to Correct with Owner is Necessary)
14	Stationary Variable Message Signs / Information Displays & Other ITS	MM	Response to any defective, worn, broken or damaged components excluding AMTRAK and Metrolink designated Variable Message Signs, Information Displays & Other ITS systems.	NA	Any faults identified or reported shall be repaired within 48 hours of the identified fault. For any complex repairs (variable message or other repairs that require a software fix etc.), coordinate with the PM as necessary to minimize service distribution.
15	Restroom Services	MM	All emergency repairs including clogged toilets/ urinals, leaking toilets/ urinals/ sinks / faucets shall be identified by the PM and reported to the MM Provider	NA	Upon notification by PM of any work order for repair or replacement, the MM Provider shall complete remediation within 1 hours for parts of a standard nature and within 24 hours for replacement parts that are not readily available.
16	Restroom Services	MM	Availability of restroom components	NA	No more than one restroom component/ fixture per restroom shall be unavailable at any one time.
17	Pavement Marking	MM	Line marking on all roadway and parking surfaces that have become faded or are no longer clearly visible	2 Weeks	Any Line marking on all roadway and parking surfaces that have become faded or are no longer clearly visible shall be repainted within 1 week of the need being identified, weather permitting.
18	Signage	MM	Response to any defective, illegible, unstable or obstructed signage	Upon regular scheduled inspection or notification from the PM	Immediate temporary signage and permanent repairs or replacement within no more than 2 weeks of detection

City and Contractor acknowledge and agree that the terms of the following Schedule will be discussed and modified as necessary to reflect accurate facts and achievable standards, as part of the mutual review and approval of the Major Maintenance Plan and/or applicable Manager Reports

SCHEDULE 6

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

(1) **City's DBE Program.** In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), City has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs, Federal Highway Administration" (referred to herein as the "Regulations"). The City's DBE program is available at the following website: http://www.anaheim.net/depts_servc/pub_works/con_adm/projadvnew.asp. This Agreement is subject to the Regulations. In order to ensure that City achieves its overall DBE Program goals and objectives, City encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of the City to:

(a) Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have equitable access to participate in all of City's DOT-assisted contracting opportunities.

(b) Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.

(c) Ensure non-discrimination in the award and administration of City's DOT- assisted contracts.

(d) Create a level playing field on which DBEs can compete fairly for DOT- assisted contracts.

(e) Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.

(f) Help remove barriers to the participation of DBEs in DOT-assisted contracts.

(g) Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

(2) **Non-Discrimination Requirements.** Manager shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the City's DBE Program with respect to Service Contracts or other contracts entered into by Manager pursuant to this Agreement, the Regulations shall prevail.

(3) **City's New Race-Neutral Component of the DBE Policy Implementation Directives.** Pursuant to Race-Neutral DBE policy directives issued by the U.S. DOT on March 23,

2006 in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washing State Department of Transportation*, City has implemented a Race-Neutral component to its DBE program. A Race-Neutral DBE Program is one that, while benefiting DBEs, does not require a set level of participation by DBEs for the purposes of this Agreement. While the City has a DBE goal for its projects, Manager shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this Agreement. However, Manager shall adhere to race-neutral DBE participation commitment(s) made at time of contract award.

(4) **Definitions:** The following definitions apply to the terms as used in these provisions:

(a) "Disadvantaged Business Enterprise (DBE)" means a small business concern:
(i) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
(ii) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(b) "Small Business Concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.

(c) "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian- Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Authority pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines,

Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

(v) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

(vi) Women, regardless of ethnicity or race.

(d) "Owned and Controlled" means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.

(e) "Manufacturer" means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Manager.

(f) "Regular Dealer" means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of this Agreement are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

(g) "Other Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or City to meet the social and economic disadvantage criteria described below.

(h) Social Disadvantage: The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.

(1) The individual must demonstrate that he/she has personally suffered social disadvantage.

(2) The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.

(3) The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.

(4) The individual's social disadvantage must have negatively affected

his/her entry into and/or advancement in the business world.

(5) A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

(ii) Economic Disadvantage:

(1) The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.

(2) The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

- availability of financing
- bonding capability
- availability of outside equity capital
- available markets

With respect to the individual and the business concern:

- personal and business assets
- personal and business net worth
- personal and business income and profits

(5) Race-Neutral DBE Submission and Ongoing Reporting Requirements (Post- Award). Manager shall complete and submit the following DBE exhibits (forms) at the times specified: "Monthly Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification" (Form 103). If Manager is a DBE firm and/or has proposed to utilize DBE firms, Manager will be required to complete and submit a Form 103 to City by the 5th of each month until completion of the Agreement to facilitate reporting of race-neutral DBE participation, following the first month of activity under the Agreement. Manager shall report the total dollar value paid to DBEs for the applicable reporting period. Manager shall also report the DBE's scope of work and the total subcontract value of commitment for each DBE reported. Manager is advised not to report the participation of DBEs toward Manager's race-neutral DBE attainment until the amount being counted has been paid to the DBE. On an annual basis, Manager will be required to prepare and submit to City a "Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification" (Form 103) clearly marked "Final" to facilitate reporting and capturing actual DBE race-neutral attainments. Manager shall complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of the Agreement.

(6) DBE Eligibility and Commercially Useful Function Standards. A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, Manager of material or supplies, or as a trucking company. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources: The CUCP web site, which can be accessed at <http://www.californiaucp.com>; or the Caltrans "Civil Rights" web site at <http://www.dot.ca.gov/hq/bep>. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815; Telephone: (916) 445-3520.

(7) DBE Crediting Provisions. When a DBE is proposed to participate in the Agreement, either as the Manager or a subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards race-neutral DBE participation. If Manager is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with its own forces. Services subcontracted to a non-DBE firm may not be credited toward the Manager's race-neutral DBE attainment. Manager is to calculate and credit participation by eligible DBE subcontractors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows: Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Agreement, obtained from a regular dealer; or One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Agreement, obtained from a DBE manufacturer.

(a) The following types of fees or commissions paid to DBE Subcontractors, Brokers, and Packagers may be credited toward the prime Manager's race-neutral DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including: Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Agreement; Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and

supplies; Fees and commissions charged for providing any insurance specifically required in the performance of the Agreement.

(b) Manager may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows: The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE. If Manager listed a non-certified DBE 1st tier subcontractor to perform work on this contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor or Manager, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

(8) DBE Subcontractors. In the event Manager identifies DBE subcontractors or suppliers for race-neutral DBE participation under the Agreement, Manager shall notify City by submitting "Request for Additional DBE Firm" to enable Manager to capture all race-neutral DBE participation. Manager shall also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

(9) DBE Certification Status. If a listed DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify Manager in writing with the date of decertification. If a non-DBE subcontractor becomes a certified DBE during the life of the project, the DBE subcontractor shall notify Manager in writing with the date of certification. Manager shall furnish the written documentation to City in a timely manner.

(10) Manager's Assurance Clause Regarding Non-Discrimination. In compliance with State and Federal anti-discrimination laws, Manager shall affirm that they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, Manager shall affirm that they will consider, and utilize subcontractors and contractors, in a manner consistent with non-discrimination objectives.

SCHEDULE 7

PROPERTY AGREEMENTS

The following is a list of currently identified real estate encumbrances, agreements and contracts relating to the use and/or at the ARTIC Site operations. This list is intended to serve for illustrative purposes only, and not an exhaustive list, provided that Contractor shall not have any obligation with respect to any agreement which is not provided to Contractor in true, correct and complete form or which Contractor does not agree in writing to perform. For example, several agreements are currently under negotiation between the City and various transit service providers. Contractor shall use commercially reasonable and diligent efforts to comply with the requirements of all Property Agreements provided to Contractor, consistent with the terms and specifications of Contractor's duties under the Agreement. However, in no event shall Contractor be obligated to expend any funds to achieve such compliance unless set forth in an Approved Operating Budget and in no event shall Contractor's indemnification obligations extend or apply to claims made under or with respect to any Property Agreements except to the extent such indemnity obligations arise out of Contractor's gross negligence or willful misconduct.

1. Purchase and Sale Agreement by and among Lewis R. Schmid and Judith E. Schmid, as trustees of the Schmid Family Trust, established Under the Declaration of Trust dated September 5, 1997, JT Restaurants LP, and the City of Anaheim dated November 20, 2012
2. Facility Management Agreement by and between The City of Anaheim and Anaheim Arena Management LLC dated for reference purposes as of December 16, 2003
3. First Amendment to Facility Management Agreement by and between the City of Anaheim and Anaheim Arena Management, LLC dated for reference purposes as of June 20, 2006
4. Second Amendment to Facility Management Agreement by and between the City of Anaheim and Anaheim Arena Management, LLC dated July 15, 2008
5. Third Amendment to Facility Management Agreement by and between the City of Anaheim and Anaheim Arena Management, LLC dated for reference purposes as of March 1, 2011
6. Amended and Restated Lease Agreement by and between the City of Anaheim and the California Angels, LP dated as of May 15, 1996
7. Letter Agreement by and between the City of Anaheim and the Anaheim Angels re Edison International Field of Anaheim – Confirmation of Parking Plan and Fireworks Landing Area dated August 1, 1998

8. Declaration of Restrictions by and among the City of Anaheim, Anaheim Angels L.P. and Ogden Entertainment, Inc. dated as of September 17, 1999
9. Parking Agreement by and between the City of Anaheim and Stadium Gateway Associates
L.L.C. dated for purposes of identification only April 7, 2000
10. Parking License Agreement re Parking Operations/Sun Theater (formerly Tinseltown Studios) by and between the City of Anaheim and Ogden Entertainment dated as of September 1, 1997.
11. Letter Agreement re Amendment to Section 3.12(d) of Parking Agreement (Sportstown Office Development) by and between City of Anaheim and HPMC Stadium Gateway Associates, LLC, as successor in interest to Stadium Gateway Associates, L.L.C dated April 7, 2000
12. Agreement for the Construction, Operation and Maintenance of a Rail Passenger Station and Parking Area at Anaheim, California by and between the National Railroad Passenger Corporation and the City of Anaheim dated as of October 26, 1982
13. Notice of Exercise of Option to Renew Lease to Atchison, Topeka and Santa Fe Railway Company from City of Anaheim dated as of February 18, 1982
14. Assignment of Lease by and between National Railroad Passenger Corporation and the City of Anaheim dated as of November 1, 1982
15. Lease by and between the Atchison, Topeka and Santa Fe Railway Company and National Railroad Passenger Corporation dated as of February 18, 1982
16. Construction and Maintenance Agreement for Anaheim Regional Transportation Intermodal Center (ARTIC) by and between Southern California Regional Rail Authority (SCRRA) and the City of Anaheim dated as of September 18, 2012
17. Sixth Amended and Restated Solid Waste Franchise between City of Anaheim and Republic Waste Services of Southern California, LLC, dba Anaheim Disposal for Solid Waste Management Services dated February 7, 2012
18. License Agreement between the City of Anaheim and Electric Transportation Engineering Corporation DBA ECotality North American, a California Corporation, dated September 25, 2012 and Amended on January 7, 2013
19. Agreement for the Purchase and Sale of Real Property and Grant Deed from OCTA to City of Anaheim with respect to the Property dated July 5, 2012

20. Declaration of Covenants, Conditions and Restrictions and Grant of Reciprocal Easements for Sportstown Anaheim recorded April 10, 2000.

SCHEDULE 8

BUDGET PROCESS AND BUDGET

Contractor will conduct a planning meeting with Property manager and a City representative to discuss anticipated maintenance and repair items for the upcoming year, including making recommendations for service for replacement. The Major Maintenance budget developed from this meeting will inform the property Manager's preparation of the Approved Operating Budget, a draft of which will be reviewed by the City.

i. City utilizes a 1-year budget schedule. The next 1 year schedule following the Transition Period is for fiscal year 2015-2016. The fiscal year 2015-2016 budget process will commence in Spring of 2015.

ii. Schedule 8 Operating Expenses are subject to adjustment as of the date the costs are incurred for increases in wages and associated payroll costs; payroll taxes; health/welfare/pension payments, insurance rates, material costs, if any, or other government and/or union mandated increases. Should overtime or unscheduled hours be required, ABM will bill The City of Anaheim for such hours plus applicable payroll taxes, insurance and fee per the attached Schedule 8 Operating Expenses. Approval for these hours will be given by the City of Anaheim before work commences unless it is an emergency situation.

iii. Schedule 8 Operating Expenses attached hereto are only estimates based on information available during the time of negotiations. All estimated budget costs may vary after agreement is in effect and may expand or contract with the needs of the City of Anaheim during the term of this agreement. ABM does not make any guarantee, implication or representation that the attached Schedule 8 Operating Expenses document is a set fixed cost, with the exception of the Onsite Facilities Team expense line item. All other self-performed or contracted service costs may vary once the site is in full operation. ABM and the City of Anaheim reserve the right to open discussion and negotiations during the term of this agreement to make adjustments as necessary based on the needs of the City of Anaheim and ABM. Any adjustments to these fees will require consent of the City.

SCHEDULE 9

CITY-APPROVED COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM

To the best of Contractor's ability, Contractor shall coordinate with Property Manager to develop a City-approved computerized maintenance management system (CMMS), to track all work requests and work orders completed by Contractor to include at a minimum: materials, staff time, inventory controls and payroll requirements integrate with the primary accounting system utilized.

SCHEDULE 10
CERTIFICATION REGARDING LOBBYING
FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned CONTRACTOR certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C.1601, et seq.)

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

CONTRACTOR, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Contractor Name _____

Signature of Certifying Official _____ Print Name _____
Title _____ Date _____

SCHEDULE 11

CONTRACTOR'S REPORTING REQUIREMENTS

As part of its obligations under the Major Maintenance Agreement (“Agreement” or “Contract”), Contractor shall prepare, execute and maintain detailed plans, manuals and reports (each a “Contractor Report” and collectively, the “Reporting Requirements”) including those defined in this Schedule. All Contractor Reports shall be prepared and maintained in electronic format (compatible with the Microsoft Office Suite) and made available to City upon request by City and periodically as provided herein, including upon each modification to each such Contractor Report, as applicable. The schedule for initial completion and updates to each Contractor Report are defined below, in addition to requirements for input and approvals from the City and designated third parties. Each Draft Table of Contents below is subject to change by Contractor in its development of each Contractor Report; provided, each Contractor Report shall be subject to review, comment and approval by City and Property Manager, in their reasonable discretion. Upon completion and approval by City and Property Manager, each Contractor Report shall be incorporated into the Agreement and shall be deemed to set forth substantive Contractor requirements and obligations thereunder and the Contractor requirements set forth in each Contractor Report shall be incorporated into the Agreement as if set forth in full therein. As used in this Schedule 11, “TCO” means receipt of the Temporary Certificate of Occupancy (TCO) for ARTIC.

List of Required Plans Include:

- Landscaping and Operations and Maintenance Plan,
- Monthly Utility Analysis Report,
- Financial and Accounting Plan,
- Major Maintenance Emergency and Response Plan
- Preventative Maintenance Plan
- Major Maintenance (5/10/15) Year Plan

Landscaping & Operations & Maintenance Plan

Intent:

To establish the responsibilities, interfaces, protocol, and other details for Contractor and 3rd parties in relation to the ongoing diligent performance of landscape and operations and maintenance activities at the ARTIC Facility and Site.

Schedule and Approval Requirements

Milestone	Due Date	Approval / Review
First Draft	60 days after Contract Award	City approval
Final Draft	30 days prior to TCO	City approval, and subject to inputs / review by Property Manager
Final Approved Report	60 days after TCO	City approval
Regular Updates	Upon every anniversary of TCO or Revision	Changes subject to City approval

Draft Table of Contents

1. Intent
2. Points of Contact (individual names and 24/7 contact details for Contractor, City and Advertising Provider)
3. Definitions (including agreed definitions for “peak hours”, “after hours”, “office hours”, “back of house”, “front / common areas,” “Incidents,” etc.)
4. Treatment of Warranties
 - a. Acknowledgement of warranty limitations and void provisions
 - b. List of relevant warranty provisions and restrictions
5. Landscaping Services
 - a. Preventative Maintenance Schedule (cutting/trimming /etc)
 - b. Description
 - c. Weed Abatement Schedule
 - d. Chemicals Used
6. Incident Reports and Remediation (in accordance with Performance Specifications and KPIs)
 - a. Graffiti
 - i. Detection procedures
 - ii. Immediate action and notification procedures
 - iii. Procedure for temporary visual remediation
 - b. Damaged or broken property
 - i. Detection procedures

- ii. Immediate action and notification procedures
 - iii. insurance/claims processing procedures (including City step-in triggers)
 - iv. Procedures for dispute resolution (in relation to disagreement of warranties, responsibility for remediation, etc.)
 - c. Pest control
 - i. Detection procedures
 - ii. Immediate action and notification procedures
 - iii. Remediation plan procedures (including City review / approval requirements)
 - iv. Pest Control Schedule
 - d. Personal injuries
 - i. Immediate action and notification procedures
 - ii. Procedures for dispute resolutions and insurance/claims processing
 - e. Hazardous Materials
 - i. Detection procedures
 - ii. Immediate action and notification procedures (Contact Information)
 - iii. Remediation plan procedures (including City review / approval requirements)
- 7. Facility Usage Reports in compliance with federal and/or state reporting standards, as applicable
- 8. Policies and Procedures Manuals
 - a. By Contractor
- 9. Staff Training (both Safety and General) Procedures, Manuals and Regulatory Requirements
 - a. By Contractor
 - b. Hazardous materials training manual
- 10. LEED Platinum Approach
- 11. Interface with Property Manager
 - a. Regular Coordination
 - b. Service Request and Electronic Work Order Procedures
 - c. Routine (planned) Activities
 - d. Non-routine Work Orders (including incident reports)
 - e. Dispute resolution
- 12. Background Checks (applies to all employees including subcontractors)
 - a. System to be utilized
 - b. Record keeping and reporting
- 13. MSDS Sheets

Monthly Utility Analysis Report

Intent:

To provide regular updates on the use of energy and other utilities at / by the ARTIC Facility and Site for the purpose of verifying utility costs / invoices; monitoring trends; and developing management strategies that reduce costs and comport with LEED objectives.

Schedule and Approval Requirements

Milestone	Due Date	Approval / Review
First Draft	90 days after Contract Award	City review
Final Form of Report	30 days prior to TCO	City approval, and subject to inputs / review by Property Manager
Regular Updates	Monthly upon of TCO	City review

Draft Table of Contents

1. Intent
2. Points of Contact (individual names and contact details for Contractor, Property Manager, City and Utility providers)
3. Definitions (if needed)
4. Description of Utility Metering and Monitoring Systems
 - a. Location and use of sub-meters
 - b. Building Management System
5. Electrical Energy Use
 - a. Annual coordination with Utility Provider to calibrate/certify electrical meters
 - b. Electrical energy conservation procedures
 - c. Photovoltaic system output and use
 - d. Monthly consumption (gross and disaggregated by use / user)
 - e. Gross Cost
 - f. Pass through costs / tenant charges
 - g. Benchmark comparison (track new vs. historic over time)
6. Water Use
 - a. Monthly consumption (gross and disaggregated by use / user)

- b. Gross Cost
 - c. Water conservation procedures
 - d. Pass through costs / tenant charges
 - e. Benchmark comparison (track new vs. historic over time)
- 7. Fiber-Optic / Data / Communications Use
 - a. Monthly consumption (gross and disaggregated by use / user)
 - b. Gross Cost
 - c. Pass through costs / tenant charges / cost recovery
 - d. Benchmark comparison (track new vs. historic over time)
- 8. Gas Use
 - a. Annual coordination with Utility Provider to calibrate/certify gas meters
 - b. Monthly consumption (gross and disaggregated by use / user)
 - c. Gross Cost
 - d. Natural gas conservation procedures
 - e. Pass through costs / tenant charges
 - f. Benchmark comparison (track new vs. historic over time)
- 9. Uninterrupted Power Supply (testing register and performance)
- 10. Emergency Generator (testing register, performance and regulatory permit compliance)
- 11. Incident Reports and Remediation (if any)
 - a. Any disruption of services to site
 - i. Date, time and duration
 - ii. Reason for disruption
 - iii. Any pending actions against utility providers or disputes over payment
 - b. Use of Uninterrupted Power Supply (UPS) and Emergency Generators
 - i. UPS battery monitoring, preventive maintenance and replacement schedule
 - ii. Emergency generator testing procedures and monthly schedule

iii. Emergency generator environmental / air quality permit and regulatory compliance procedures

iv. Fuel replenishment procedures for emergency generator v. Any failure to activate or perform and duration of failure vi. Reason for failure to activate or perform as intended.

Financial and Accounting Plan

Intent

To establish the responsibilities, interfaces, protocol, and other details for Contractor's obligations with respect to financial management, accounting and reporting.

Schedule and Approval Requirements

Milestone	Due Date	Approval / Review
First Draft	60 days after Contract Award	City approval
Final Draft	90 days before TCO	City approval
Final Approved	30 days before TCO	City approval
Regular Updates	Annually on October 1.	Changes subject to City

Draft Table of Contents

1. Intent
2. Points of Contact (individual names and contact details for Financial Accounting Manager, Property Manager and City)
3. Reporting Structure. Propose a system of financial and accounting reports to be prepared and submitted periodically (monthly unless otherwise noted) by Contractor. Such reports to include:
 - a. Budget Report to include monthly as well as year-to-date comparisons of actual expenditures to budgeted amounts.
 - b. Operating Statement and variance report identifying any significant variance (15% or \$100,000) between actual and budgeted reporting categories with discussion and analysis.
 - c. Payroll accounting/processing, including payroll taxes and employee benefits.
 - d. Accounts receivable and payable (on a quarterly basis).
 - e. Detailed general ledger trial balance (on a quarterly basis).
4. Accounting System. Identify and describe the accounting system used to track expenditures.

Major Maintenance Emergency and Response Plan

Intent

To establish the responsibilities, interfaces, protocol, and other details for Contractor and 3rd parties in relation to the preparation for and response to Major Maintenance EMERGENCY events at the ARTIC Facility and Site.

Schedule and Approval Requirements

Milestone	Due Date	Approval / Review
First Draft	30 days after Contract Award	City review
Final Form of Report	30 days prior to TCO	City approval, and subject to inputs / review by Property Manager
Regular Updates	Upon Revision or Annually October 1	City review

Draft Table of Contents

1. Intent
2. Points of Contact (individual names and contact details for Contractor, Property Manager, City and others as needed)
3. Definitions (if needed)
4. Description of Primary Essential/Systems
 - a. Location
5. Warranty Contact Information
 - a. Expiration of Warranty
 - b. Contact Information
 - c. Manuals Upon Request
6. Description of available Equipment for use on Site
 - a. Boom Truck, Scissor Lift, Tools, etc..
 - b. Location
7. Emergency Shut Off Valves
 - a. Locations
 - b. Areas of impact
8. Response Time
 - a. Steps for remediation
 - b. Mobilization Plan
 - c. Decision Point of Contact

- d. Emergency Solutions
 - 9. Assistance with Emergency Events in conjunction with Property Management:
 - a. Evacuation Plan
- Major Disaster or Catastrophic Plan (Terrorism, Law Enforcement etc).

Major Maintenance (5/10/15 Year) Plan

Intent

To establish the responsibilities, interfaces, protocol, and other details for Contractor and 3rd parties in relation to the preparation for and response to Long Term Maintenance Needs at the ARTIC Facility and Site.

Schedule and Approval Requirements

Milestone	Due Date	Approval / Review
First Draft	120 days after Contract Award	City review
Final Form of Report	180 after Contract Award	City approval, and subject to inputs / review by Property Manager
Regular Updates	Upon Revision	City review

Draft Table of Contents

1. Intent
2. Definitions (if needed)
3. Description of Equipment/Systems
 - a. Serial Number/Make/Model Number / Type/Tonnage/ Size, etc.
 - b. Permit / License Number
 - c. Expiration Dates
 - d. Renewal Dates
 - e. Location
 - f. Life Expectancy
 - g. Year of Replacement
 - h. Estimate Cost of Replacement (Equipment/Labor)
4. Warranty Information
 - a. Expiration of Warranty
 - b. Contact Information
 - c. Description of Warranty Maintenance Plan
 - d. Manuals Upon Request
5. Life Expectancy
6. Plan of Replacement
 - a. Date
 - b. Estimated Cost

SCHEDULE 12

FEDERAL REQUIREMENTS

1. COMPLIANCE WITH ALL LAWS

CONTRACTOR shall at its own cost and expense comply with all statutes, ordinances, regulations, policies, procedures, directives and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all work prepared by CONTRACTOR shall conform to applicable local, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator.

2. FEDERAL CHANGES

CONTRACTOR shall at all times comply with all applicable Federal Transportation Authority (“FTA”) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement between the Orange County Transportation Authority (“AUTHORITY”) and FTA, as they may be amended or promulgated from time to time during this Agreement. CONTRACTOR’s failure to comply shall constitute a material breach of contract.

3. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

CONTRACTOR acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to CONTRACTOR pertaining to any matter resulting from the Agreement. CONTRACTOR agrees to include this requirement in all of its subcontracts

4. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

4.1 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 the CONTRACTOR’s actions pertaining to the Agreement. Accordingly, by signing this Agreement, 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 this Agreement for which this Agreement’s work is being performed. CONTRACTOR also 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 penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

4.2 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 the Agreement, which is financed in whole or part with Federal assistance awarded by FTA under the authority of 49 U.S.C. §5307 et seq., the Federal Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n) (1) et seq. on the CONTRACTOR, to the extent the Federal Government deems appropriate. CONTRACTOR agrees to include this requirement in all of its subcontracts.

5. CIVIL RIGHTS ASSURANCE

During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest agree as follows:

5.1 Compliance with Regulations: CONTRACTOR shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

5.2 Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

5.3 Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

5.4 Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by ANAHEIM to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information the CONTRACTOR shall so certify to ANAHEIM as appropriate, and shall set forth what efforts it has made to obtain the information.

5.5 Sanctions for Noncompliance: In the event of the CONTRACTOR's noncompliance with nondiscrimination provisions of this Agreement, ANAHEIM shall impose Agreement sanctions as it may determine to be appropriate, including, but not limited to:

.01 Withholding of payments to the CONTRACTOR under the Agreement until the CONTRACTOR complies; and/or

.02 Cancellation, termination, or suspension of the Agreement, in whole or in part.

5.6 Title VI of the Civil Rights Act. In determining the types of property or services to acquire, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000d et seq. and DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21. In addition, FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for FTA Recipients,"

05-13-07, provides FTA guidance and instructions for implementing DOT's Title VI regulations.

5.7 The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 et seq., prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.

5.8 Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs 5.1 through 5.7 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as ANAHEIM 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 supplier as a result of such direction, the CONTRACTOR may request ANAHEIM to enter into such litigation to protect the interests of ANAHEIM, and, in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

5.9 The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. §§ 60-1.4, 60-300.5(a) and 41 C.F.R. § 60-741.5(a). These regulations prohibit discrimination against qualified minorities, women, protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified minorities and women, protected veterans and qualified individuals with disabilities .

6. INCORPORATION OF FTA TERMS

All contractual provisions required by Department of Transportation (DOT), whether or not expressly set forth in this document, as set forth in Federal Transit Administration (FTA) Circular 4220.1F, as amended, 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. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any requests, which would cause ANAHEIM and/or AUTHORITY to be in violation of the FTA terms and conditions.

7. ENERGY CONSERVATION REQUIREMENTS

CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy Conservation Act, as amended, 42 U.S. C. Sections 6321, et seq.

8. FLY AMERICA REQUIREMENTS

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 sub-recipient 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. 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. CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

9. TRANSPORTATION OF EQUIPMENT, MATERIALS OR COMMODITIES BY OCEAN VESSEL

9.1 CONTRACTOR shall utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

9.2 CONTRACTOR shall furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipping 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 in paragraph 35.1 of this Article to ANAHEIM (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo,

Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification of the project.

10. PROHIBITED INTERESTS

10.1 CONTRACTOR covenants that, for the term of this Agreement, no director, member, officer or employee of ANAHEIM during his/her tenure in office or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

10.2 No member of or delegate to, the Congress of the United States shall have any interest, direct or indirect, in this Agreement or to the benefits thereof.

11. PRIVACY ACT

CONTRACTOR shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, CONTRACTOR agrees to obtain the express consent of the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those

individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

12. CODE OF CONDUCT

12.1. CONTRACTOR agrees to establish and implement an alcohol and drug program that complies with 41 U.S.C section 701-707, (the Drug Free Workplace Act of 1988), which is attached to this Agreement, and produce any documentation necessary to establish its compliance with sections 701-707.

12.2. Failure to comply with this Section may result in nonpayment or termination of this Agreement.

13. RECYCLED PRODUCTS

CONTRACTOR shall 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. CONTRACTOR agrees to include this requirement in all of its subcontracts.

14. CLEAN WATER REQUIREMENTS

CONTRACTOR shall 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. CONTRACTOR shall report each violation to ANAHEIM and understands and agrees that ANAHEIM will in turn, report each violation as required to assure notification to FTA and appropriate EPA Regional Office. CONTRACTOR agrees to include this requirement in all of its subcontracts.

15. CLEAN AIR

CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONTRACTOR shall report each violation to ANAHEIM, who will in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONTRACTOR agrees to include this requirement in all of its subcontracts.

16. BUY AMERICA

16.1 CONTRACTOR is directed to the “Buy America” requirements of the Surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Section 1041(a) and 1048(b) and the regulations adopted pursuant thereto. In conformance with the law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this Project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and other coating that protects or enhances the value of steel or iron materials shall be considered a manufacturing process subject to the “Buy America” requirements.

16.2 A Certificate of Compliance, conforming to the provisions of this Section shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall specifically certify that all manufacturing processes for the materials occurred in the United States, except for the exceptions listed herein.

16.3 The requirements imposed by law and regulations do not prevent a minimal use of foreign steel and iron materials of the total combined cost of the materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. CONTRACTOR shall furnish ANAHEIM acceptable documentation of the quantity and value of the foreign steel and iron prior to incorporating the materials in the work.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

CONTRACTOR shall comply with the provisions provided in Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701, et seq), as supplemented by Department of Labor regulations (29 CFR Part 5).

18. SEISMIC SAFETY.

CONTRACTOR agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. Sections 7701 et seq. in accordance with Executive Order No. 12699,

“Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction,” 42 U.S.C. § 7704 note, and comply with implementing U.S. DOT regulations, “Seismic Safety,” 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

19. ACCESS TO THIRD PARTY CONTRACT RECORDS.

CONTRACTOR agrees to require, and assures that its third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). CONTRACTOR further agrees to require, and assures that its third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

20. RIGHT OF FEDERAL GOVERNMENT TO TERMINATE.

Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the CONTRACTOR has violated the terms of the Grant Agreement or Cooperative Agreement for the Project, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The CONTRACTOR understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant Agreement or Cooperative Agreement for the Project that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the CONTRACTOR before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the CONTRACTOR has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project, the Federal Government reserves the right to require the CONTRACTOR to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

21. SUBSTANCE ABUSE

CONTRACTOR agrees to comply with the following Federal regulations and guidance:

a. Drug-Free Workplace. U.S. OMB guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 C.F.R. Part 182, and U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. §§ 702 et seq., including any amendments to these U.S. DOT regulations when they are promulgated.

b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

22. PATENT RIGHTS

a. General. If any invention, improvement, or discovery of the CONTRACTOR or of any lessee, third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the CONTRACTOR agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

b. Federal Rights. The CONTRACTOR agrees that its rights and responsibilities, and those of each lessee, third party contractor, or other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the CONTRACTOR agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, third party subcontract, or arrangement, as specified in 35 U.S.C. §§ 200 et seq., and U.S. Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” 37 C.F.R. Part 401, irrespective of the status of the CONTRACTOR lessee, third party contractor or other participant in the Project (i.e., a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual).

c. License Fees and Royalties. FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the CONTRACTOR has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 et seq., which applies to patent rights developed under a research project.

23. RIGHTS IN DATA AND COPYRIGHTS

a. Definition. The term “subject data,” means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. “Subject data” do not include financial reports, cost analyses, or other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the Agreement for the Project:

(1) Except for its own internal use, CONTRACTOR may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may CONTRACTOR authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

c. Federal Rights in Data and Copyrights. CONTRACTOR agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection. As used herein, “for Federal Government purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government’s license to:

(1) Any subject data developed under the Agreement for the Project, or under a subagreement, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Agreement for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which CONTRACTOR, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA’s purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, CONTRACTOR agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, CONTRACTOR agrees to provide other reports pertaining to the Project that FTA may request. CONTRACTOR agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the Contractor agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth herein, FTA may make available to any FTA recipient, subrecipient, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA’s license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall

become subject data as defined herein and shall be delivered as the Federal Government may direct. This subsection, however, does not apply to adaptations of automatic data processing equipment or programs for the CONTRACTOR's use when the costs thereof are financed with Federal assistance through an FTA capital program.

e. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, CONTRACTOR has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 et seq., which applies to patent rights developed under a research project.

f. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, CONTRACTOR agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the CONTRACTOR of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. CONTRACTOR shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

g. Restrictions on Access to Patent Rights. Nothing herein pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. Data Developed Without Federal Funding or Support. In connection with the Project, CONTRACTOR may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections b, c, and d herein above do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, CONTRACTOR understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

i. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, CONTRACTOR understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records).

24. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE.

To the extent applicable, CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA- LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing