

INDEMNIFICATION AND INSURANCE REQUIREMENTS

1. Basic Requirements for all Contracts

The following language shall be used for all contracts:

Indemnification – CONTRACTOR/CONSULTANT agrees to indemnify, defend (with counsel reasonably approved by SBCTA) and hold harmless San Bernardino County Transportation Authority** and their respective officers, directors, members, employees, contractors, agents and volunteers (collectively the “Indemnitees”) from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. To the extent permitted by law, CONTRACTOR/CONSULTANT’s duty to defend and indemnification obligations shall apply regardless of the existence or degree of fault of any of the Indemnitees. The duty of CONTRACTOR/CONSULTANT and its insurers to provide a defense shall be immediate upon receipt of a written tender of defense from any of the Indemnitees, notwithstanding any subsequent allocation of defense costs that may be required by law. CONTRACTOR/CONSULTANT’s indemnification obligation applies to the “passive” negligence of any of the Indemnitees, but does not apply to the “sole” or “active” negligence or “willful misconduct” of any of the Indemnitees within the meaning of Civil Code section 2782.

** Note that you may be asked to indemnify other stakeholders like Caltrans, San Bernardino County or the Cities that could also be a party to the project or scope of work.

Qualifications of Insurance Carriers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-X or better, unless otherwise approved in writing by SBCTA’s Risk Manager.

Additional Insured Coverage. All policies, except those for Workers’ Compensation, CONTRACTOR/CONSULTANT’s Pollution Liability and Professional Liability insurance, shall be endorsed by ISO Form CG 20 10, and ISO Form CG 20 38****, to name San Bernardino County Transportation Authority*** and its officers, directors, members, employees, and agents, as additional insureds (“Additional Insureds”). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR/CONSULTANT under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability but shall allow coverage for SBCTA to the full extent provided by the policy.

*** Note that you may be asked to indemnify other stakeholders like Caltrans, San Bernardino County or the Cities that could also be a party to the project or scope of work.

****Note that SBCTA will require the most appropriate ISO forms and it could vary depending on the nature of the work being performed.

Waiver of Subrogation Rights - To the fullest extent permitted by law, CONTRACTOR/CONSULTANT hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other CONTRACTOR/CONSULTANT, subcontractor or sub-subcontractor performing work or rendering services on behalf of SBCTA, in connection with the scope of work contemplated, engaged in or performed in this contract. To the fullest extent permitted by law, CONTRACTOR/CONSULTANT shall require similar written express waivers and insurance clauses from each of its subcontractors of every tier. CONTRACTOR/CONSULTANT shall require all of the policies and coverages required in this Article to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit CONTRACTOR/CONSULTANT from waiving the right of subrogation prior to a loss or claim.

Deductibles and Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONTRACTOR/CONSULTANT shall be responsible for any deductible or self-insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONTRACTOR/CONSULTANT will pay, and shall require its sub-CONTRACTOR/CONSULTANTS to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. Without SBCTA's Risk Manager's expressed written approval no deductibles or SIR will be allowed. At the option of SBCTA, if the deductible or SIR is approved and it is greater than \$10,000 or one (1) percent of the amount of coverage required under this Contract, whichever is less, the CONTRACTOR/CONSULTANT shall guarantee that either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONTRACTOR/CONSULTANT shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA shall have the right to review any and all financial records that SBCTA, at its sole discretion deems necessary to approve any deductible or SIR. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONTRACTOR/CONSULTANT. The CONTRACTOR/CONSULTANT's policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any CONTRACTOR/CONSULTANT's deductible or SIR

No Waiver - Failure of SBCTA to enforce in a timely manner any of the provisions of this Article shall not act as a waiver to enforcement of any of these provisions at a later date

Subcontractors' Insurance - Insurance required of the CONTRACTOR/CONSULTANT shall be also provided by subcontractors or by CONTRACTOR/CONSULTANT on behalf of all subcontractors to cover their services performed under this Contract. CONTRACTOR/CONSULTANT may reduce types and the amounts of insurance limits provided by subcontractors to be proportionate to the amount of the subcontractor's contract and the level of liability exposure for the specific type of work performed by the subcontractor. CONTRACTOR/CONSULTANT shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subcontractor.

Non-Limitation of Insurance Requirements - The insurance coverage provided and limits required under this Contract are minimum requirements and are not intended to limit the CONTRACTOR/CONSULTANT's indemnification obligations under the Contract, nor do the indemnity obligations limit the rights of the Indemnified Parties to the coverage afforded by their insured status. To the extent required by Law in connection with Work to be performed, the CONTRACTOR/CONSULTANT shall obtain and maintain, or cause to be obtained and maintained, in addition to the insurance coverage expressly required under this Contract, such other insurance policies for such amounts, for such periods of time and subject to such terms, as required by Law and any other agreements with which the CONTRACTOR/CONSULTANT is required to comply, including any Third-Party Agreements. Liability insurance coverage will not be limited to the specific location designated as the Site, except that if the CONTRACTOR/CONSULTANT arranges project-specific general liability, excess liability, or workers' compensation coverage, limitations of coverage to the Site will be permitted subject to SBCTA approval and use of the broadest available site-specific endorsements. No liability policy will contain any provision or definition that would serve to eliminate so-called "third-party-over action" claims, including any exclusion for bodily injury to an employee of the insured or of any Subcontractor. The CONTRACTOR/CONSULTANT acknowledges and will at all times comply with the provisions of Labor Code Section 3700 which require every employer in the State to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of that code.

Project Specific Insurance - All insurance coverage required to be provided by CONTRACTOR/CONSULTANT, with the exception of automobile liability and worker's compensation, shall apply specifically and exclusively for the Project and extend to all aspects of the Work, with coverage limits dedicated solely to the Project. Use of other insurance programs is acceptable, provided that coverage under such programs provides dedicated Project-specific limits and identified premiums and meets all requirements described in contract.

No Representations or Warranties - SBCTA makes no representation or warranty that the coverage, limits of liability, or other terms specified for the insurance policies required under this contract are adequate to protect the CONTRACTOR/CONSULTANT against its undertakings under this Contract or its liability to any third party, nor will they preclude SBCTA from taking any actions as are available to it under this Contract or otherwise at law.

Review of Coverage – SBCTA may at any time review the coverage, form, and amount of insurance required under this contract, and may require the CONTRACTOR/CONSULTANT to make changes in such insurance reasonably sufficient in coverage, form, and amount to provide adequate protection against the kind and extent of risk that exists at that time. SBCTA may change the insurance coverages and limits required under this contract by notice to the CONTRACTOR/CONSULTANT, whereupon the CONTRACTOR/CONSULTANT will, within sixty (90) days of such notice date, procure the additional and/or modified insurance coverages. Upon such change any additional cost (at actual cost) from such change will be paid by SBCTA and any reduction in cost will reduce the Contract Price pursuant to a Change Order.

Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by SBCTA or any additional insured under this contract. .

Severability of Interests – The CONTRACTOR/CONSULTANT agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the CONTRACTOR/CONSULTANT and the SBCTA or between SBCTA and any other insured or additional insured under the policy.

Proof of Coverage – Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including declarations pages of each policy, certificates of insurance and the required additional insured endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, CONTRACTOR/CONSULTANT shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.

Enforcement – SBCTA may take any steps as are necessary to assure CONTRACTOR/CONSULTANT's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONTRACTOR/CONSULTANT fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONTRACTOR/CONSULTANT or withhold such expense from amounts owed CONTRACTOR/CONSULTANT, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONTRACTOR/CONSULTANT of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONTRACTOR/CONSULTANT for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONTRACTOR/CONSULTANT, or any subcontractor of any tier of their obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract.

Special Risks or Circumstances. SBCTA reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

2. Insurance Specifications for all Contracts – *The following language shall be used for all contracts:*

The CONTRACTOR/CONSULTANT agrees to provide insurance set forth in accordance with the requirements herein. If the CONTRACTOR/CONSULTANT uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the CONTRACTOR/CONSULTANT agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, the CONTRACTOR/CONSULTANT shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with limits (**outlined in footnote A**) covering all persons/employees including volunteers providing services on behalf of the CONTRACTOR/CONSULTANT and all risks to such persons under this contract.

Commercial General Liability - CONTRACTOR/CONSULTANT shall maintain a commercial general liability (CGL) insurance program (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability as outlined in (**footnote B**). The policy shall, at a minimum, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in this Contract), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy (ies), and products and completed operations. If products/completed operations coverage is required by SBCTA then it shall be written on (ISO Form 20 37 10 01) or if not available then closest equivalent form acceptable to SBCTA. If a general aggregate applies, it shall apply separately to this project/location. The project name must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03 or CG 2504). Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.

Umbrella/Excess CGL Insurance – If the CONTRACTOR/CONSULTANT elects to include an umbrella or excess policy to cover any of the total limits required beyond the primary commercial general liability policy limits and/or the primary commercial automobile liability policy limits, then the policy must include the following: The umbrella or excess policy shall follow form over the CONTRACTOR/CONSULTANT 'S primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage. The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted. The umbrella or excess policy must also extend coverage over the automobile policy if it is to be used in combination with the primary automobile policy to meet the total insurance requirement limits. There shall be no statement limiting the coverage provided to the parties listed as additionally insureds or as indemnitees below.

Commercial Auto Insurance – A total limit of liability of not less than (outlined in **Footnote C**). This total limit of liability may be met by combining the limits of the primary auto policy with an umbrella or excess policy in accordance with subparagraph 4 (Umbrella/Excess CGL) of Section A of this Article. Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the CONTRACTOR/CONSULTANT services. Combined Bodily Injury and Property Damage Liability insurance. The commercial automobile liability insurance shall be written on the most recent edition of ISO Form CA 00 01 or equivalent acceptable to SBCTA.

3. Insurance Specifications for CONSTRUCTION Contracts – Coverages outline above in item 2 plus all of the following language shall be used for construction contracts:

Builder’s Risk Insurance – CONTRACTOR/CONSULTANT shall purchase and maintain property insurance written on a builder’s risk “Special Form Cause of Loss” or equivalent policy form in an amount equal to the not to exceed amount of the Contract, plus the cost of materials supplied or installed by others on a full replacement cost basis. The Builder’s Risk policy shall include a soft cost endorsement that covers soft costs equal to twenty percent (20%) of the Contract’s full value. Soft costs are defined as certain expenses, in addition to labor and materials, required to complete the Project that has been delayed due to unexpected physical damage and include, but are not limited to, the following: legal/accounting fees, design or other professional fees, financing costs, taxes, general administration, lease expenses, permit fees and insurance premiums. This insurance shall include the interests of the Additional Insureds as named below, CONTRACTOR/CONSULTANT and the subcontractors of every tier on the Project as insureds. The insurance shall cover without limitation, loss or damage to the Work arising from the perils covered under “Special Form Cause of Loss” form coverage including, without duplication of coverage for theft, fire, lightning, explosion, or hail, smoke, aircraft or vehicles, riot or civil commotion, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false-work, testing and delay of startup, temporary buildings, property in transit and while stored at a temporary location, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for CONTRACTOR/CONSULTANT’s services and expenses required as a result of such loss. During the Project construction period, CONTRACTOR/CONSULTANT and its subcontractors shall mutually waive all rights of recovery against each other and against the Additional Insureds identified below for damages caused by fire or other perils covered by the Builders Risk “Special Form Cause of Loss” insurance. All applicable policies of insurance covering the Work or the property of the CONTRACTOR/CONSULTANT or subcontractor shall be endorsed to provide a waiver of subrogation in favor of the Additional Insureds identified below, CONTRACTOR/CONSULTANT and all subcontractors of every tier. Further, CONTRACTOR/CONSULTANT hereby releases, and shall cause its subcontractors to release, the Indemnitees identified as additional insureds, or indemnified parties from any and all claims, losses and damages caused by fire or other perils covered by the Builders Risk “Special Form Cause of Loss” insurance. There shall be no deductible or self-insured retention exceeding \$10,000.00 per loss, other than earthquake or flood which may have deductible or self-insured retentions not exceeding \$50,000.00. The policy may have sub-limits not less than the following:

Earthquake	\$5,000,000.00
Flood	\$1,000,000.00

Contractor’s Pollution Liability Insurance - The policy shall contains limits not less than \$2,000,000 with \$4,000,000 aggregate.

Railroad Protective Liability Insurance - (NOTE this coverage is only required if working in close proximity to a railroad or if required by a third party) Insurance Services Office Form Railroad Protective Liability, AAR-AASHTO (ISO/RIMA), in the name of SBCTA with respect to the operations they or any of their subcontractors perform on the Property. Minimum Limits: \$2 million per occurrence combined single limit, for coverage and for losses arising out of injury to or death of all persons and for physical loss or damage to or destruction of Property, including the loss of use thereof. A \$6 million annual aggregate shall apply. If providing coverage on the London claims- made form, the following provisions shall apply: The limits of liability shall be not less than \$3 million per occurrence, combined single limit. A \$9 million aggregate may apply. Declarations item 6, extended claims made date, shall allow an extended claims made period no shorter than the length of the original policy period plus one year. If equivalent or better, wording is not contained in the policy form, the following endorsement must be included: It is agreed that "physical damage to Property" means direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbed, catenaries, signals, bridges or buildings.

4. Insurance Specifications for Professional Service Contracts – Coverages outline above in item 2 plus all of the following language shall be used for Professional Service contracts:

Professional Liability: A limit of liability not less than (**See Footnote D**) per claim. Coverage shall be appropriate for the CONTRACTOR/CONSULTANT'S profession and provided services to include coverage for errors and omissions arising out of the CONTRACTOR/CONSULTANT'S professional services, or services of any person employed by the CONTRACTOR/CONSULTANT, or any person for whose acts, errors, mistakes or omissions the CONTRACTOR/CONSULTANT may be legally liable. If Coverage is on a claims made basis: Policy shall contain a retroactive date for coverage of prior acts, which date will be prior to the date the CONTRACTOR/CONSULTANT begins to perform Work under this Contract. CONTRACTOR/CONSULTANT shall secure and maintain "tail" coverage for a minimum of three (3) years after Contract completion.

Cyber Liability Insurance – Coverage must be appropriate to the CONTRACTOR/CONSULTANT's profession and work hereunder, with limits not less than (**See Footnote E**). Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of SBCTA in the care, custody, or control of the CONTRACTOR/CONSULTANT. If not covered under the CONTRACTOR/CONSULTANT r's liability policy, such "property" coverage of SBCTA may be endorsed onto the CONTRACTOR/CONSULTANT's Cyber Liability Policy as covered property as follows: Coverage must be sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of SBCTA that will be in the care, custody, or control of Contractor.

5. Footnotes:

A. Employers Liability limits shall be no less than \$1,000,000 and may be higher at the sole discretion of SBCTA based on risk assessment.

B. Commercial General Liability limit shall be no less than \$1,000,000 where risk is determined by SBCTA to be minimal. On construction and professional services contracts the limit shall be no less than \$3,000,000 and based on size, scope and complexity of the project and could be \$25,000,000 or higher.

C. Auto Liability limit shall be no less than \$1,000,000 and on construction contracts the limit shall be no less than \$5,000,000 and based on size, scope and complexity of the project and could be \$10,000,000 or higher. On Professional Services contracts the limit shall be \$1,000,000

D. Professional Liability limits shall be no less than \$2,000,000 with a \$4,000,000 aggregate and this limit may be significantly higher based on the scope and complexity of the assignment.

E. Cyber Liability limits shall be no less than \$1,000,000 and may be higher based on the scope and complexity of the assignment.