



INVITATION FOR BIDS (IFB) 23-1002891

FOR

WEST VALLEY CONNECTOR BUS RAPID TRANSIT (BRT) – PHASE 1

MAINLINE CONSTRUCTION

IN

SAN BERNARDINO COUNTY

KEY IFB DATES

IFB Issue Date:	May 15, 2023
Pre-Bid Conference Date:	Tuesday, May 30, 2023 at 2:00 p.m.
Written Questions/Approved Equal Request Deadline:	Friday, June 2, 2023, at 4:00 p.m.
Response To Questions:	June 8, 2023
Bid Due Date:	Friday, July 21, 2023 at 5:00 p.m.
Contract Award/Notice of Award Date:	September 6, 2023
Limited Notice To Proceed:	September 2023
Full Notice To Proceed	October 2023

All Dates are tentative and subject to change. The Bid due date is final unless changed via an addendum.



May 15, 2023

**SUBJECT: NOTICE INVITING SEALED BIDS
INVITATION FOR BIDS (IFB) 23-1002891 “WEST VALLEY
CONNECTOR BRT - PHASE 1 - MAINLINE CONSTRUCTION IN SAN
BERNARDINO COUNTY”, (hereinafter referred to as “Project”)**

The San Bernardino County Transportation Authority (“SBCTA”) invites sealed bids for **West Valley Connector BRT - Phase 1 – Mainline Construction in San Bernardino County** (“Project”). The budget for this Project is approximately \$110,000,000.

A General Contractor who desires to submit a Bid must have specific recent and relevant experience completing transportation highway and/or bus rapid transit construction work, specifically including working with transit signal priority systems.

The plans and specifications for this project may only be obtained by signing the “SSI Document Release Form” included in this solicitation as Attachment D. The deadline for requesting the plans and specifications is **5:00p.m. on Friday, June 7, 2023**. Firms may request this by emailing the form to Jenny Herrera at jherrera@gosbcta.com. Please allow up to three (3) business days for a response.

The IFB, bid forms, plans and specifications can be found on PlanetBids.

Firms intending to submit a bid should note the “Key IFB Dates” on the cover of this IFB. SBCTA intends, subject to contract approval, to have the selected firm under contract by **September 2023**. The IFB and IFB schedule updates and addenda, together with other important information are available on SBCTA’s website at www.gosbcta.com (“Bids & RFPs” under **“DOING BUSINESS”**). Firms are requested to check the Vendor Portal periodically, and no less frequently than weekly, for IFB updates, addenda and other information. All bidders will be held accountable for compliance with all updates, addenda and other information posted on the Vendor Portal. Please note that SBCTA will not be responsible for mailing any addenda, schedule updates or other information to any firm.

A virtual Pre-Bid Conference is scheduled for **2:00 pm on Tuesday, May 30, 2023**. Attendance at this virtual Pre-Bid Conference is encouraged, but not mandatory. However, all bidders will be held accountable for understanding of and compliance with all information and instructions given at the Pre-Bid Conference.

Join Zoom Meeting

<https://gosbcta.zoom.us/j/85731305120?pwd=aVJOZ2lkSjl5Ujl0SlBOcjVXQk9Ldz09>

Meeting ID: 857 3130 5120

Passcode: 814238

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+1 312 626 6799 US (Chicago)

+1 360 209 5623 US

+1 386 347 5053 US

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+1 689 278 1000 US

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Find your local number: <https://gosbcta.zoom.us/j/85731305120?pwd=aVJOZ2lkSjl5Ujl0SlBOcjVXQk9Ldz09>

Attendees of the Pre-Bid Conference must complete a sign in form found at: <https://sanbag-lfweb.sanbag.ca.gov/Forms/Signin>.

All questions and requests for clarifications to this IFB or approved equal requests, including those that could not be specifically addressed at the Pre-Bid Conference, must be put in writing and submitted to SBCTA electronically via Planet Bids, and they must be received by SBCTA no later than **4:00 p.m., on Friday, June 2, 2023**. All questions received after the date and time specified may or may not be responded to, at the sole discretion of SBCTA. SBCTA's responses to the questions received by the date and time identified herein will be posted on the Vendor Portal on SBCTA's website at www.gosbcta.com: click on "Doing Business", which will take you to the "Bids & RFPs" page. There, click on the tab "Vendor Portal".

The procurement will be conducted electronically through SBCTA's PlanetBids Vendor Portal webpage. SBCTA will not accept paper copies for any part of this procurement, including the bid submittal.

Bids are due at or before **5:00 p.m. on Friday, July 21, 2023**. Bids must be submitted electronically through SBCTA's Vendor Portal PlanetBids.

To propose for this project, vendors must be registered with SBCTA's PlanetBids Vendor Portal website. A firm must accept the terms and conditions in order to proceed. Firms may save their

bid at any time as a draft. Firms may edit the bid as often as they need to until the IFB closes. The PlanetBids system will not accept bids after the due date and time specified for this procurement and SBCTA will not consider any late submittals.

Please note that where two or more firms, persons or entities wish to submit one bid in response to this IFB, they should do so on a prime/sub-consultant basis rather than as a joint venture. SBCTA will contract with a single firm, person, or entity only, and not with a joint venture.

Bids will be electronically unlocked, and the results will be made available to view, through the Vendor Portal at **5:00 p.m, Friday, July 21, 2023.**

General description of work:

The West Valley Connector Project will be a 100% zero-emission BRT system, and the second BRT route in San Bernardino County. The selected Contractor will be responsible for construction of the Project based on the final design plans provided by SBCTA.

The Project (Phase 1 - Mainline Construction) is 19 miles and will upgrade a portion of existing Omnitrans Bus Route 61 which runs along Holt Boulevard, adding approximately 3.5 miles of center-running, dedicated bus-only lanes. There will be 21 stations in Phase 1 that will provide a much improved transit connection to Ontario International Airport (ONT) and help build transit connectivity by linking ONT, two Metrolink lines (San Bernardino and Riverside) and multiple major activity centers along the route including Ontario Mills and Victoria Gardens. Headways will be 10 minutes in the peak commute period and 15 minutes off-peak, providing a high level of service to the community.

Contractor will be responsible for building the Project improvements in accordance with the final design plans. At the time of issuance of this ITP, the Right of Way is partially certified. Information concerning ROW availability will be updated by an Addendum. It is anticipated that by the time NTP is issued, the ROW will be certified.

As of January 1, 2015, all contractors and subcontractors bidding and performing work on Public Works (as defined in California Labor Code § 1720 (a)) Projects must register on an annual basis with the California Department of Industrial Relations (DIR), and effective April 1, 2015, furnish electronic payroll records for new projects to the Labor Commissioner.

This is a Federal-Aid project: The contract, if awarded, will be financed in part by the U.S. Department of Transportation (US DOT). Bidders are required to certify that they meet all federal requirements identified in this IFB, including but not limited to, all applicable equal opportunity laws and regulations and all conditions of the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, 3146, 3147) and the Labor Code of the State of California commencing at section 1770 et seq. The Federal minimum wage rates for this project are predetermined by the United States Secretary of Labor. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the General Prevailing Wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the awarded firm shall pay not less than the higher wage rate. Wage schedules are available at SBCTA's office or on the internet at www.wdol.gov/dba.aspx and www.dir.ca.gov/OPRL/statistics_research.html.

This project is a Federal Transit Administration (FTA) funded project subject to Title 49, Part 661, Code of Federal Regulations (CFR), entitled "Buy America," and the Build America, Buy

America Act, Public Law 117-58, div. G §§ 70901-27 (“BABA”), that collectively provides Federal funds may not be obligated unless steel, iron, manufactured products and construction materials used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. **Bidders should be aware of the applicability of construction materials to the categories of products that must be manufactured in America pursuant to BABA. FTA follows the guidance for construction materials issued by the Office of Management and Budget (OMB). BABA requires that each manufacturing process required for the manufacture of the construction material and the inputs of the construction material occurs in the United States.**

Construction materials for purposes of BABA includes an article, material, or supply— other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives— that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall. An article, material, or supply should only be classified into one of the following categories: (1) iron or steel; (2) a manufactured product; or (3) a construction material. For ease of administration, an article, material, or supply should not be considered to fall into multiple categories. Items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. Absent any existing applicable standard in law or regulation that meets or exceeds the standards articulated in this IFB, bidders shall consider “all manufacturing processes” for construction materials to include at least the final manufacturing process and the immediately preceding manufacturing stage for the construction material. Bidders should refer to OMB Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure at <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>.; Notice that the Build America, Buy America Requirement for Construction Materials Applies Effective November 10, 2022, and Notice of Proposed Waiver of that Requirement for a Narrow Category of Contracts and Solicitations, 87 FR 68572.

A contractor or subcontractor shall not be qualified to bid on or be listed in a bid proposal subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Labor Code § 1720(a)), unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

If the contract is awarded, the contractor will be required to comply with all applicable laws and regulations, whether or not specifically listed in this IFB or the contract.

Award of this contract is subject to the availability, appropriation and receipt of federal, State and/or local funds sufficient to carry out the work identified in this IFB.

All bidders must possess the proper license at the time of Contract award. A California State Contractor's License Classification A is required of the prime bidder. All subcontractors must possess the appropriate licenses for each specialty subcontracted.

Bidders are to be fully informed respecting the DBE requirements and the Regulations as outlined in DBE Regulatory Requirements. SBCTA is obligated to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts. As the sub-recipient of federal funds awarded to Omnitrans (the Direct Recipient), SBCTA highly encourages the participation of DBE contractors and the utilization of DBE subcontractors in this project. Phase 1 of the West Valley Connector Project has an overall project DBE goal of 8.5% of the total anticipated Project cost for mainline construction, construction management, and project management. Omnitrans, the direct recipient of funds, has an overall agency DBE goal of 2.9%.

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**SBCTA
INVITATION FOR BIDS IFB 23-1002891
FOR**

**WEST VALLEY CONNECTOR BRT – PHASE 1
MAINLINE CONSTRUCTION IN SAN BERNARDINO COUNTY**

I. INSTRUCTION TO BIDDERS

The San Bernardino County Transportation Authority (“SBCTA”) is soliciting bids from qualified bidders (“firms” or “bidders”) to provide mainline construction for Phase 1 of the West Valley Connector BRT Project.

A. IFB DOCUMENTS

The plans and specifications for this project may only be obtained by signing the “SSI Document Release Form” included in this solicitation as Attachment D. The deadline for requesting the plans and specifications is **5:00 p.m. on Friday, June 7, 2023**. Firms may request this by emailing the form to Jenny Herrera at jherrera@gosbcta.com. Please allow up to three (3) business days for a response.

The IFB, including but not limited to the plans and specifications, special provisions, and bid forms for bidding this project, can be obtained on PlanetBids.

B. EXAMINATION OF BID DOCUMENTS/INFORMED BIDDER

By submitting a bid, the bidder represents and acknowledges that it has thoroughly reviewed the requirements of this IFB, including all documents, contractual requirements, plans and specifications, and has become familiar with the work identified in this IFB. Bidder also acknowledges that it is satisfied with the general and local conditions to be encountered; the character, quality, and scope of work to be performed; quantities and type of materials to be furnished; and character, quality, and quantity of surface and subsurface materials or obstacles.

C. SENSITIVE SECURITY INFORMATION (SSI) REQUIREMENTS

SBCTA has established Sensitive Security Information Standards for recognizing, marking, handling, and disposing of Sensitive Security Information (SSI) in order to minimize the risk of future threats. All Covered Persons who have access to SBCTA SSI shall comply with SBCTA’s standards as set forth in Special Provision 17 and the Project Safety and Security Management Plan.

All Bidders shall present a signed SSI Document Release Form to SBCTA before they are able to access the Plans and Specifications. The form is included in this solicitation as “Attachment D - SSI Document Release Form.”

D. CONTACT INFORMATION

All inquiries, contacts or questions related to this IFB (**PLEASE REFERENCE IFB #23-1002891 IN THE SUBJECT LINE**) shall be directed to:

SBCTA
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715
(909) 884-8276
Attention: Jenny Herrera, Procurement Analyst
jherrera@gosbcta.com

Bidders must not discuss this IFB with any official, Board Member or employee of SBCTA, other than the staff identified herein. Neither bidders, nor anyone representing the bidder, are to discuss this IFB with any consultant or contractor engaged by SBCTA or any SBCTA employees for assistance in preparing a response to the IFB except for the Procurement Manager. Violation of this prohibition may result in disqualification of the bidder.

E. PRE-BID CONFERENCE

A Pre-Bid Conference is scheduled for **2:00 p.m. on Tuesday, May 30, 2023 via Zoom**. Interested firms are strongly encouraged to attend the Pre-Bid Conference, but no firm will be disqualified for failure to attend. However, all Bidders will be held accountable for compliance with all information and instructions given at the Pre-Bid Conference. Attendees are required to complete the sign-in sheet at: <https://sanbag-lfweb.sanbag.ca.gov/Forms/Signin>.

Join Zoom Meeting

<https://gosbcta.zoom.us/j/85731305120?pwd=aVJOZ2lkSjl5Ujl0SlBOcjVXQk9Ldz09>

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+1 689 278 1000 US
+1 929 436 2866 US (New York)
+1 301 715 8592 US (Washington DC)
Meeting ID: 857 3130 5120
Passcode: 814238
Find your local number: <https://gosbcta.zoom.us/j/85731305120>

F. WRITTEN QUESTIONS/APPROVED EQUALS

All questions, requests for clarification or approved equal requests, including oral questions that could not be addressed at the Pre-Bid Conference, must be put in writing and submitted electronically via PlanetBids and they must be received by SBCTA **no later than 4:00 p.m. on Friday, June 2, 2023**. SBCTA's responses to the questions received by the date and time identified herein will be posted on the PlanetBids.

Any request for an approved equal must be fully supported with technical data or other relevant information as evidence of support that the substitute meets or exceeds the current specification requirements. The burden of proof as to the suitability, equality and compatibility rests solely with the bidder. SBCTA shall be the sole judge as to the suitability, equality and compatibility of the proposed equal.

G. ADDENDA

SBCTA reserves the right to revise the solicitation documents prior to the bid opening. Any changes to this IFB will be made by written addendum and posted on SBCTA's website. SBCTA will not be bound to any modifications to or deviations from the requirements set forth in this IFB as a result of any oral discussions and/or instructions. Bidders shall acknowledge receipt of all Addenda to the IFB documents in the Bid Letter. Failure to acknowledge receipt of all Addenda may render the bid non-responsive.

H. CONFLICT OF INTEREST

A firm that has provided architectural or engineering services to SBCTA for the work identified in this IFB, before bid submittal, is prohibited from any of the following: submitting a bid; subcontracting for any part of the work identified herein; and/or supplying materials.

I. PRE-CONTRACTUAL EXPENSES

SBCTA shall not be liable for any pre-contractual expenses incurred by bidders in preparation or submittal of their bids. The bidders shall not include any such expenses in their bids. Prohibited pre-contractual expenses include any and all expenses incurred by the bidder prior to issuance of the Notice to Proceed by SBCTA.

J. IRAN CONTRACTING ACT OF 2010

All proposers shall submit written certification, in accordance with Public Contract Code Section 2204(a), that at the time the proposal is submitted, the proposer signing the proposal is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person (as defined in Public Contract Code Section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

Proposers are cautioned that making a false certification may subject the proposer to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code Section 2205.

K. PREVAILING WAGES

The work proposed in this IFB will be financed in whole or in part with federal funds; therefore, all statutes, rules and regulations promulgated by the federal government shall be followed for this contract. The Federal Prevailing Wage rates for this project are predetermined by the United States Secretary of Labor under the Davis-Bacon Act (40 U.S.C. § 3141 et seq.). Similarly, the project also requires compliance with the Labor Code of the State of California commencing at Section 1770 et seq. All contractors shall be bound by federal and California law regarding: definitions; work subject to prevailing wages; duties, responsibilities and rights of the parties; wage determinations; petitions to review prevailing wage determinations; the certification of payroll records, including requests, content and cost; the withholding of funds from contractor; and hearing procedure. All pertinent federal and state statutes and regulations, including but not limited to those referenced above, are hereby incorporated by reference into this document as though set forth in their entirety.

Wage schedules will be set forth in the wage determination(s) issued with this IFB and in copies of this IFB that may be examined at the offices described above where the project plans, special provisions, and bid forms can be reviewed. The wage schedules are also accessible via the Internet at http://www.dir.ca.gov/OPRL/statistics_research.html and www.wdol.gov/dba.aspx.

Wherever there is a difference between the prevailing wage rates predetermined by the Secretary of Labor (federal) and the General Prevailing Wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the contractor and subcontractors shall pay not less than the *higher* of the two wage rates. SBCTA will not accept State wage rates not specifically included in the federal minimum wage determinations. This includes “helper” (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where federal wage determinations do not contain State wage rate determination otherwise available for use by the contractor and subcontractors, the contractor and subcontractors shall pay not less than the federal minimum wage rate, which most closely approximates the duties of the employee(s) in question.

Effective June 20, 2014, the Department of Industrial Relations (DIR) made changes to the administration and enforcement of prevailing wage requirements, including a contractor’s

registration program. Contractors are required to register and meet the online requirements as identified in DIR application before submitting a public works bid in the State of California. Additional information can be found at www.dir.ca.gov.

Refer to Special Provision 04 for additional prevailing wage requirements.

L. NON-DISCRIMINATION

The contract, if awarded, is subject to the California Fair Employment and Housing Act requirements of Government Code section 12900 et seq. The contractor or subcontractor shall not discriminate on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status of any person in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of FTA-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract, or such other remedy, as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

M. TAXES

The amount of the bid must be inclusive of state and local sales tax, which remains the obligation of the contractor. The contractor is responsible for payment of all taxes for any goods, services, processes and operations for this contract.

N. FEDERAL REQUIREMENTS

This project is financed in part with federal funds, and therefore, all of the statutes, rules and regulations by the federal government applicable to the work being performed will apply to this project, including "Buy America," 49 U.S.C. § 5323(j), 49 C.F.R. part 661 and the Build America, Buy America Act, Public Law 117-58, div. G §§ 70901-27.

O. LICENSING REQUIREMENTS

The contractor shall possess a **Class A General Engineering Contractor's** license at the time of award through Project acceptance by SBCTA. Bidder shall ensure that all subcontractors comply with the appropriate licensing requirements as identified in California Public Contract Code section 20103.5.

P. INSURANCE REQUIREMENTS (See requirements in sample contract)

Bidder shall review the insurance language and insurance limits in the sample contract. Bidder shall be fully prepared to secure the necessary insurance coverage and limits as detailed in the Contract and comply with all insurance requirements. Submitting

“Certificate of Compliance with Insurance Requirements” form as part of the bid certifies the Bidder’s understanding and compliance of the insurance requirements, without exceptions.

Q. PREPARATION OF SUBMITTAL

1. Bids shall include the bid forms and submittal requirements outlined in the solicitation documents. Bidders shall complete the forms in accordance with the directions specified in these instructions and bid forms. All required explanatory narratives and the supplementary data are to be included with the bid forms as indicated.
2. Failure to comply with the requirements outlined in these solicitation documents may cause the bid(s) to be incomplete and rejected as non-responsive.
3. A bid shall be rejected when the bidder imposes conditions that would modify requirements of the solicitation documents.

II. BID SUBMITTAL

- A. Bids must be submitted on the forms provided in “Bid Forms” included in this IFB. Bidders are responsible for ensuring that the Bid Forms are properly completed. Only original Bid Forms will be allowed unless otherwise stated elsewhere in this IFB. If any forms are incomplete or missing, the Bid may be considered non-responsive and subject to rejection at the sole discretion of SBCTA.
- B. Bids must be submitted electronically through SBCTA’s Vendor Portal: PlanetBids **at or before 5:00 p.m., Friday, July 21, 2023**. To bid for this project, firms must be registered with SBCTA’s Vendor Portal.
- C. A firm must accept the PlanetBids terms and conditions in order to proceed. Firms may save their bid at any time as a draft. Firms may edit the bid as often as they need to until the Invitation for Bids (IFB) closes. The PlanetBids system will not accept bids after the due date and time specified for this procurement and SBCTA will not consider any late submittals.
- D. Please note that where two or more firms, persons or entities wish to submit one bid in response to this IFB, they should do so on a prime/subcontractor basis rather than as a joint venture. SBCTA will contract with a single firm, person or entity only and not with a joint venture.
- E. Bids will be electronically unlocked, and the results will be made available to view through PlanetBids by **5:00 p.m., Friday, July 21, 2023**.

III. ACCEPTANCE OF BIDS

SBCTA reserves the right to accept or reject any or all bids, to waive any informalities or irregularities in any bid, to determine which bid is the lowest responsive bid of a responsible bidder and which bid should be accepted in the best interest of SBCTA. SBCTA reserves the right to accept, to withdraw, or to cancel this IFB at any time without prior notice and

SBCTA makes no representation that any contract will be awarded to any firm responding to this IFB.

IV. WITHDRAWAL OF BIDS

A bidder, or authorized agent of a bidder, may withdraw its bid at any time before the bid opening date and time by submitting a written request to SBCTA, Attn: Procurement Manager, at the email address identified in this IFB. Withdrawing a bid prior to bid opening does not prevent a bidder from submitting a timely new bid. After bid opening, the bid shall remain open and not withdrawn for a period of ninety (90) calendar days from the date prescribed for its opening.

V. BID SECURITY FORMS

- A. Bid Bond – Each bid shall be accompanied by a bid guaranty in the amount of ten percent (10%) of the bidder's bid amount in the form of (i) a cashier's check made payable to SBCTA, (ii) a certified check, made payable to SBCTA, or (iii) a Bidder's Bond executed by an admitted surety insurer (as defined in Code of Civil Procedure §995.660) made payable to SBCTA. The admitted surety executing a Bidder's Bond must be registered to do business in San Bernardino County. If the bidder fails or refuses to enter into a contract, if awarded, the bond shall be forfeited to SBCTA.
- B. Performance/Payment Bond – The successful bidder shall furnish to SBCTA Payment and Performance Bond on the forms provided in this IFB, in the amount of one hundred percent (100%) of the bid amount, per the requirements defined herein.

VI. SUBCONTRACTOR LISTING

Pursuant to California Public Contract Code section 4104, the Bidder shall identify the following in their bid:

- a. The name, location of place of business (address), California Contractor License Number, and Public Works Contractor Registration Number issued pursuant to Labor Code Section 1725.5 of each subcontractor performing work or rendering a service to the bidder in an amount in excess of one-half of one percent of the total bid amount, or \$10,000, whichever is greater; and
- b. Show the portion of work by bid item number, description and percentage of each bid item subcontracted.

The bidder shall list only one subcontractor for each portion of work as identified in its bid and shall complete and submit the subcontractor listing form presented in this IFB package as part of its bid. The successful bidder shall perform work equivalent to at least thirty (30%) of the total amount of the work with its own forces. If the bidder is not proposing to use subcontractors, or the portion of the work is less than ½ of 1%, or \$10,000, the bidder is to acknowledge the subcontractor listing form in this IFB with "Not Applicable".

The bidder shall complete the form entitled "Listing of Subcontractors" contained in this IFB. Section A of the form must be completed and submitted with the bid. Section B of the form shall be completed and submitted to SBCTA within 24 hours of the Bid Due Date.

VII. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

As a sub-recipient of Federal Transportation Administration (FTA) funds, SBCTA is required to comply with all regulations in conformance with Title 49, Code of Federal Regulations (CFR), Part 26, entitled "Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs" ("Regulations"). The Regulations in their entirety are incorporated herein by this reference. As a sub-recipient of federal funds, SBCTA is obligated to comply with the regulations set forth by Omnitrans, the direct recipient of federal funds. It is the obligation of SBCTA to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts. As the sub-recipient, SBCTA highly encourages the participation of DBE contractors and the utilization of DBE subcontractors in this project. Omnitrans, as direct recipient of funds, has an overall agency DBE goal of **2.9%**, and any DBEs on this project will be used to satisfy the overall agency DBE goal.

Bidders must complete and submit to SBCTA the following forms no later than the close of business four (4) business days from the Bid Due Date:

- Form 12-B, "Bidders List of Subcontractors (DBE and Non DBE Required)" Parts I and II;
- Form 15-G, "Local Agency Bidder DBE Commitment", and if required;
- Form 15-H, "DBE Information-Good Faith Efforts" (from all bidders)

Only DBE firms certified through the California Unified Certification Program (CUCP) will be counted towards the overall Omnitrans DBE goal. All DBE participation shall be collected and reported. Please refer to DBE Regulatory Requirements (Attachment C) and forms outlined in the DBE Regulatory Requirements for detailed information and instructions. Bidders are advised that questions related to the DBE requirements must be submitted as a written question per the instructions in this IFB.

VIII. CONTRACT AWARD

Any contract awarded as a result of this IFB will be awarded to the lowest responsive, responsible bidder in accordance with this IFB. The successful bidder shall be required to perform all the terms and conditions of SBCTA's Contract as identified in the form attached hereto as Attachment A.

IX. EXECUTION OF CONTRACT

The successful bidder shall submit to SBCTA the executed contract together with: the required Performance and Payment Bonds, certificates of insurance, Non-Lobbying Certifications For Federal-Aid Contracts w/Disclosure Forms; and Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusions for the prime and its subcontractors, if applicable, within ten (10) working days from the date of the Notice

of Award issued by SBCTA. Failure to submit the documents cited and to execute the contract within the specified time shall be just cause for the annulment of the award and the forfeiture of the bidder's Bid Bond.

X. PROTEST INFORMATION

SBCTA has on file written Protest Procedures (Policy 11007). Firms may download a copy from www.gosbcta.com, click on "DOING BUSINESS" and select "Bids & RFPs," then select "Policy 11007: Vendor Protest" under the heading "Important Documents".

XI. PUBLIC RECORDS ACT

Bids may be subject to public disclosure under the California Public Records Act and other public records laws, and by submitting a bid, the bidder waives all rights to confidentiality of any information submitted in the bid and agrees to any and all such disclosures required or permitted by law. Bids become the property of SBCTA when submitted, and by submitting a bid, the bidder agrees that SBCTA may use any information, documentation or writing contained in the bid for any SBCTA purpose.

XII. CONFIDENTIAL DOCUMENTS

Proposers are advised that any and all documents related to this procurement will be made available to the public on SBCTA's website upon the conclusion of this procurement. Any sensitive or confidential information, including financial statements, should be submitted as a separate document, under separate cover, and marked as "Confidential." SBCTA has sole discretion to determine whether information is protected from disclosure under the California Public Records Act and that marking information "Confidential" does not guarantee it will not be made public.

BID FORMS

FORMS TO BE SUBMITTED AT TIME OF BID

1. Bid Form
2. Bidder's Bond
3. Non-Collusion Affidavit
4. Listing of Subcontractors-Section A (Section B to be submitted within 24 hours after the bid due date.)
5. Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)
6. Bidder's Certificate of Compliance – Worker's Compensation Insurance
7. Non-Lobbying Certification for Federal-Aid Contracts w/Disclosure Form, if applicable – (LLL Form) (Prime)
8. Public Contract Code section 10162 Questionnaire
9. Public Contract Code section 10285.1 Statement
10. Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion- Primary Participant
11. Buy America Certification
12. Certification for Clean Air Act and Federal Water Pollution Control
13. Previous Contracts and Compliance Reports
14. Certificate of Compliance with Insurance Requirements
15. Contractor Questionnaire
16. Iran Contracting Act of 2010 Certification Form

DBE FORMS MUST BE SUBMITTED WITHIN FOUR (4) BUSINESSDAYS AFTER BID DUE DATE

1. DBE Exhibit 12-B - "Bidders List of Subcontractors (DBE and Non DBE)" Part I and Part II
2. DBE Exhibit 15-G – "Local Agency Bidder DBE Commitment"
3. DBR Exhibit 15-H – "DBE Information-Good Faith Efforts", with all applicable back up documentation

FORMS THAT MUST BE SUBMITTED WITHIN TEN (10) BUSINESSDAYS AFTER NOTICE OF AWARD

1. Executed Contract – signed by contractor
2. Payment Bond – 100% of Bid amount
3. Performance Bond – 100% of Bid amount
4. Insurance Certificates with endorsements
5. Non-Lobbying Certification for Federal-Aid Contracts w/Disclosure Form, if applicable (LLL) (subcontractors)
6. Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion Form, if applicable – Lower Tier (subcontractors)



**BID FORM
WEST VALLEY CONNECTOR PROJECT BRT - PHASE 1
MAINLINE CONSTRUCTION
IFB 23-1002891**

Name of Bidder: _____

Business P.O. Box: _____

Business Street Address: _____

City, State, Zip: _____

Telephone No.: _____

Fax No.: _____

Date: _____

Contractor's License Number /
Classification _____

The work for which this bid is submitted is for the construction in conformance with the Invitation for Bids, the Special Provisions (including the payment of not less than the higher of State general prevailing wage rates or Federal Prevailing wage rates, as defined in the Invitation For Bids), the project plans and specifications described below, including **any Addenda thereto**, the Contract attached as Attachment A, the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished, and the most current General Prevailing Wage Rates at the date of the bid opening.

Accompanying this bid is a "Cashier's Check", "Certified Check", or "Bidders Bond" (**Circle applicable term as the case may be**), made payable to the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY for the sum of _____ Dollars (\$),
_____ in an amount equal to ten percent (10%)
of the total bid amount.

If a Cashier's Check or Certified Check accompanies this bid as the guarantee, then the proceeds thereof shall become the property of the San Bernardino County Transportation Authority if, in the case this bid is accepted by said Board of San Bernardino County Transportation Authority or Authorized Representative and such bidder has received a Notice of Award issued by SBCTA, the undersigned shall fail within ten (10) business days, not including Saturdays, Sundays and legal holidays, thereafter to execute a Contract with, and furnish the securities required by, said Board of San Bernardino County Transportation Authority or authorized representative. Otherwise, such guarantee shall be returned to the undersigned.

BID FORM IFB 23-1002891

The undersigned hereby acknowledges the following:

1. The Project Plans dated March 6, 2023, and Invitation for Bid, and Technical Specifications dated May 15, 2023 for the work to be done are entitled:

WEST VALLEY CONNECTOR BRT – PHASE 1 – MAINLINE CONSTRUCTION

This bid is submitted with respect to the changes to the IFB documents included in the Addenda issued. Bidder further acknowledges the receipt of the following Addenda Number(s):

_____.

2. The bidder has thoroughly examined and is familiar with the work required and the documents included in this IFB. By investigation at the site of the work and otherwise, the bidder is satisfied as to the nature and location of the work and is fully informed as to all conditions and matters which can affect the work performed and the cost thereof.
3. Bidder fully understands the scope of the work and specifications identified in this IFB, has carefully checked all words and figures inserted in this IFB, and further understands that SBCTA will not be liable for any errors or omissions in the preparation of this bid.
4. Bids are required for the entire work. The amount of the bid for comparison purposes will be the total of all items. The total of unit basis items will be determined by extension of the item price bid on the basis of the estimated quantity set for the item.
5. The bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the "Item Total" column shall be the product of the unit price bid and the estimated quantity for the item.
6. In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, except as provided in (a) or (b) as follows:
 - (a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount of the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;
 - (b) (Decimal errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, one-hundredth, etc., from the entered total, the discrepancy will be resolved using the entered unit price or item total, whichever most closely approximates percentage-wise the unit price or item total in SBCTA's final estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise, if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular unless the

project being bid has only a single item and a clear, readable total bid is provided. Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number or digits and, if applicable, decimal placement. Cents symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in dollars and/or decimal fractions of a dollar. Bids on lump sum items shall be item totals only; if any unit price for a lump sum item is included in a bid and it differs from the item total, the item's total shall prevail.

The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity, which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of SBCTA, and that discretion will be exercised in the manner deemed by SBCTA to best protect the public interest in the prompt and economical completion of the work. The decision of SBCTA respecting the amount of a bid or the existence or treatment of an irregularity in a bid shall be final.

7. If this Bid is accepted and the undersigned fails to execute the Contract and furnish the Performance and Payment bonds, insurance certificates, and the Required Documents within ten (10) working days, not including legal holidays, after the date of SBCTA's delivery to Bidder of the Notice of Award, SBCTA may, at its option, determine that the Bidder has abandoned the Contract, and thereupon this Bid and the acceptance thereof shall be null and void and the forfeiture of the bid security accompanying this Bid shall operate and the same shall become the property of SBCTA.
8. The undersigned, as Bidder, declares that the only persons or parties interested in this Bid as principals are those named herein; that this bid is made without collusion with any other person, firm or corporation; that the Bidder has carefully examined the location of the proposed work, the Contract, any addenda issued, and the plans referred to herein, having become thoroughly familiar with the terms and conditions of the Contract Documents and with the local conditions affecting the performance and cost of the work at the place where the Work is to be done, and the bidder hereby proposes, and agrees if this bid is accepted, that the Bidder will contract with SBCTA, in the form of the copy of the Contract annexed hereto, to provide all necessary labor, machinery, tools, apparatus, and other means of construction, and to do all the work and furnish all the materials specified in the Contract, in the manner and time therein prescribed, and in accordance with the requirements of SBCTA as herein set forth, and that he/she will accept as full payment therefore the following prices, to wit:

**BID ITEMS LIST LOCATED ON PLANET BIDS UNDER
THE “LINE ITEMS” TAB.**

SBCTA

BID FORM IFB 23-1002891

(Continued)

9. It is understood that SBCTA reserves the right to reject the bid and that it shall remain open and not withdrawn for a period of ninety (90) calendar days from the date of the bid opening.
10. In accordance with the provisions of sections 1860 and 1861 et seq. of the California Labor Code, every contractor will be required to secure the payment of compensation of his employees. Each contractor to whom a public works contract is awarded shall certify that he/she is aware of the provisions of section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and that he/she will comply with such provisions before commencing the performance of the work of this contract.
11. In accordance with California Public Contract Code section 10232, the bidder hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with any order of a federal court which orders the contractor to comply with an order of the National Labor Relations Board.
12. In accordance with Title VI of the Civil Rights Act of 1964 (the "Act"), as amended, which prohibits discrimination on the basis of race, color, and national origin, the contractor and all subcontractors will ensure their services are consistent with and comply with obligations and procedures outlined in SBCTA's current Board-adopted Title VI Program, including the Public Participation Plan and the Language Assistance Plan, located on the Agency website, About SBCTA - SBCTA (gosbcta.com)
13. Bidder hereby certifies that he/she has reviewed the insurance coverage requirements specified in the Contract. Should he/she be awarded the contract for the work, bidder further certifies that he/she can meet all Contract requirements for insurance, including insurance coverage of his/her subcontractors.
14. Bidder hereby lists the names of all persons interested in the forgoing bid as principals as follows:

IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, and names of the president, secretary, treasurer, and manager thereof authorized to execute this bid. If a partnership, state true name of firm and names of all individual partners. If bidder or other interested person is an individual, state first and last names in full.

BID FORM IFB 23-1002891
(Continued)

15. Bidder has attached hereto and incorporates herein the complete and entire list of subcontractors to be employed by the undersigned in the performance of the work.

Bidder certifies under penalty of perjury under the laws of the State of California that the statements within the foregoing Bid, including, without limitation, the questionnaire and statements provided for in Public Contract Code sections 10162, 10232 and 10285.1, are true and correct and that the Bidder has complied with the requirements of section 8103 of the Fair Employment and Housing Authority Regulations (2 CCR § 8103). By my signature on this bid, I further certify, under penalty of perjury of the laws of the State of California and the United States of America, that the Non-collusion Affidavit required under Title 23, United States Code, section 112, California Public Contract Code section 7106, the "Debarment and Suspension" Certification (Title 2 CFR, Parts 180 and 1200), and the "Buy America" Certification (Title 49 CFR, Part 661), are true and correct.

This declaration executed in California, at (place) _____ on (date) _____

Business Type: (Check only one) ☐ Corporation ☐ Partnership ☐ Sole Proprietorship ☐ Limited

Liability Company organized under the laws of the State of: _____

Bid and Certification submitted by _____

Company Name

SIGN HERE

Signature of Authorized Representative of Bidder

Print Name and Title

Note: If the bidder is a corporation or limited liability company, the legal name of the corporation/limited liability company shall be set forth above with the signature of the individual authorized to sign contracts on behalf of the corporation/limited liability company. If bidder is a partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if a bidder is an individual, his/her signature shall be placed above. If signature is by an agent, other than a corporate officer, a limited liability company manager, or general partner of a partnership, a Power of Attorney must be on file with SBCTA prior to opening of the bids or submitted with the bid; otherwise, the bid will be disregarded as irregular and found non-responsive.

BIDDER'S BOND

IFB 23-1002891

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (bidder's name) as principal and bidder (hereafter "Principal"), and _____ (surety company) (hereafter "Surety"), as surety for this bond, provide this forfeiture bond to SBCTA (hereafter "Owner") as beneficiary. Surety shall be an admitted surety insurer as defined in section 995.660 of the California Code of Civil Procedure.

Principal and Surety are firmly bound unto the Owner in the penal sum of ten percent (10%) of the total aggregate amount of the bid of the above contractor, submitted by said Principal to Owner for the work described below (hereafter "Penal Sum"), for the payment of which sum in lawful money of the United States, well and truly to be made, Principal and Surety bind ourselves, our heirs, executors, administrators, and successors and assigns, jointly and severally, firmly by these presents. The Penal Sum shall be forfeited in its entirety to Owner, without consideration as to the amount of actual damages incurred by Owner, if Principal fails to enter into the Contract for the work described in this "Invitation for Bids" and fails to furnish the necessary performance and payment bonds and insurance. A Bid Bond has been submitted by Principal to owner and delivered to and received by SBCTA located at: 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA 92410-1715.

IN WITNESS WHEREOF, we hereunto set our hands and seals on this day of _____.

Principal:

Dated _____

Signature of Principal

Surety

Address

City, State, and Zip

Dated _____

Signature of Surety

NOTE: Signatures of those executing for Surety must be properly acknowledged. This form may be reproduced for transmittal to the Surety for execution and attached to the front of the original Bid Bond Form.

**CERTIFICATE OF ACKNOWLEDGMENT
BIDDER'S BOND**

CONTRACT 23-1002891

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____

On this ____ day of _____ in the year 20____ before me, _____ personally appeared, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Seal

NONCOLLUSION AFFIDAVIT
Public Contract Code section 7106

In accordance with Public Contract Code section 7106, the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I declare, under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Date:

Principal Officer of:

(Name and Address of Contractor)

LISTING OF SUBCONTRACTORS

In compliance with the provisions of section 4100 et seq. of the Public Contract Code of the State of California, and any amendments thereto, the undersigned has set forth below the name, the address, and a description of the work for each subcontractor who will perform work or labor or render services to the undersigned in or about the construction of the work or improvement to be performed in an amount over \$10,000 or 0.5% of the total contract bid price, whichever is greater.

Section A - This section is to be completed and submitted with your bid

Subcontractor:

Name

Address

City, State & Zip Code

License Number

DIR Registration No.

Description of work to be performed:

Subcontractor:

Name

Address

City, State & Zip Code

License Number

DIR Registration No.

Description of work to be performed:

Section B -This section to be completed and submitted within 24 hours of the bid due date to jherrera@gosbcta.com

Subcontractor:

Bid item number, description and percentage of bid item

Bid item number, and description of work

_____ % of work

Subcontractor:

Bid item number, description and percentage of bid item (cont'd)

Bid item number, and description of work

_____ % of work

By:

Bidder's Signature

This form may be reproduced and attached behind this page to list additional subcontractors.

**NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL
EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION
(EXECUTIVE ORDER 11246 AND 41 CFR PART 60-4)**

Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity for Construction (Feb. 1999)

(A) The bidder's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(B) The goals for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade is	19.0%
Goals for female participation for each trade is	6.9%

These goals are applicable to all of the contractor's construction work performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, the contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(C) The bidder's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled Affirmative Action Compliance Requirements for Construction, and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor, or from project to project, for the sole purpose of meeting the contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(D) The contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the: (1) Name, address, and telephone number of the subcontractor; (2) Employer's identification number of the subcontractor; (3) Estimated dollar amount of the subcontract; (4) Estimated starting and completion dates of the subcontract; and (5) Geographical area in which the subcontract is to be performed.

(E) As used in this Notice, and in any contract resulting from this solicitation, the covered area is the Cities of Ontario, Rancho Cucamonga, and Montclair, County of San Bernardino, and the City of Pomona, County of Los Angeles, California.

The Bidder represents that (a) it ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

**BIDDER’S CERTIFICATE OF COMPLIANCE REGARDING WORKERS
COMPENSATION INSURANCE**

In conformance with current statutory requirements of section 1860 et. seq., of the Labor Code of the State of California, the undersigned confirms the following certification:

“As the bidder, I am aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

Bidder Name: _____

Signature: _____

Name and Title: _____

Date: _____

NON-LOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS

I, _____ (Firm Name) as the bidder certifies, by signing and submitting this bid, 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 any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds, other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in conformance with its instructions.

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 Title 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Executed this _____ day of __, 20__

By: _____
Signature of bidder's authorized official

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action or a material change to previous filing pursuant to Title 31 U.S.C. section 1352. The filing of a form is required for such payment or agreement to make payment to any lobbying entity for influencing or attempting to influence 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 a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, Federal Transit Administration.
7. Enter the Federal program name or description for the covered Federal action in item 1. If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., RFP-DE-90-001.
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action. (b) Enter the full

names of the individual(s) performing services and include full address if different from 10 (a). Enter last name, first name and middle initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal official(s). Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
14. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
15. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503
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Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 (See reverse for public burden disclosure.)

IFB23-1002891

DISCLOSURE OF LOBBYING ACTIVITIES (Continuation Sheet)

Reporting Entity: _____

Page _____ of _____

CALIFORNIA PUBLIC CONTRACT CODE SECTION 20101 QUESTIONNAIRE

In accordance with California Public Contract Code section 20101, the bidder shall complete, under penalty of perjury, the following questionnaire.

Has the bidder, any officer of the bidder, or any employee of the bidder who has proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

☐ Yes

☐ No

If the answer is yes, explain the circumstances in the space below.

CALIFORNIA PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In accordance with California Public Contract Code section 10285.1, the bidder hereby declares under penalty of perjury that neither the bidder nor any subcontractor listed by the bidder for this bid has been convicted by a court of competent jurisdiction within the preceding three (3) years of any offenses referred to in the section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of any public works contract, as defined in Public Contract Code section 1101, with any public entity, as defined in Public Contract Code section 1100, including the Regents of the University of California or Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employees thereof, as referred to in section 10285.1.

If the Bidder cannot so certify, explain fully in the space below:

INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION

TITLE 2, CODE OF FEDERAL REGULATIONS, PARTS 180 AND 1200

Each Bidder shall complete the “Certification of Debarment, Suspension and other Responsibility Matters” included in this IFB for itself and its principals, and submit the certification with its bid. Failure to submit the certification may result in the rejection of the bid.

If a Bidder plans to use subcontractors on this project, the Bidder shall have all subcontractors with contracts in excess of \$25,000 complete the certification entitled “Certification Regarding Debarment For Lower Tier Covered Transactions” and **submit that certification within ten (10) working days after Notice of Award.**

By signing and submitting this bid, the prospective bidder is providing the certification set out below. The inability of the bidder to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The bidder shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with SBCTA’s determination whether to enter into this transaction. However, **failure of the bidder to furnish a certification or an explanation shall disqualify such person from participation in this transaction.**

The certification in this clause is a material representation of fact upon which reliance was placed when SBCTA determined to enter into this transaction. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to other remedies available to SBCTA, SBCTA may terminate this transaction for cause or default.

The bidder shall provide immediate written notice to the department or agency to which this bid is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549 (2 CFR Part 180, Subpart I). You may contact SBCTA for assistance in obtaining a copy of those regulations.

The prospective primary participant agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 2 CFR part 180, subpart H, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

The bidder further agrees by submitting this bid that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by SBCTA, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 2 CFR part 180, subpart H, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A bidder may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management (SAM) (www.sam.gov).

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under these instructions, if a bidder knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 2 CFR part 180, subpart H, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to SBCTA, SBCTA may terminate this transaction for cause or default.

INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION – LOWER TIER COVERED TRANSACTIONS

Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more 2 CFR parts 180 and 1200).

By signing and submitting this bid, the subcontractor is providing the certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the subcontractor knowingly rendered an erroneous certification, in addition to other remedies available to SBCTA, SBCTA may pursue available remedies, including suspension and/or debarment.

The subcontractor shall provide immediate written notice to the person to which this bid is submitted if at any time the subcontractor that its certification was erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal or bid," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 (2 CFR Part 180, Subpart I). You may contact the person to which this bid is submitted for assistance in obtaining a copy of those regulations.

The subcontractor agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

The subcontractor further agrees by submitting this bid that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management (SAM) (www.sam.gov).

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS (PRIME)**

The _____
Firm Name/Principal

Certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
2. Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for: commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price-fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local), with commission of any of the offenses enumerated in paragraph 2 herein;
4. Have not within a three-year period preceding this bid had one or more public transaction(s) (federal, state or local) terminated for cause or default;
5. Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding the proposal (USDOT Order 4200.6 implementing appropriations act requirements); and
6. Are not a corporation with any unpaid Federal Tax Liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

If unable to certify to any of these statements in this certification, the primary participant (bidder) shall attach an explanation to this certification.

**THE PRIMARY
PARTICIPANT**

Firm Name/Principal

Certifies or affirms the truthfulness and accuracy of the content of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 et seq., are applicable.

**Signature and Title of Authorized
Official:**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED
TRANSACTIONS - (SUBCONTRACTORS)**

The _____
Firm Name/Principal

Certifies by submission of this bid, that neither it nor its principals

1. Are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency;
2. Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding the proposal (USDOT Order 4200.6 implementing appropriations act requirements); and
3. Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

If unable to certify to any of the statements in this certification, such participant(s) shall attach an explanation to this bid.

THE LOWER TIER PARTICIPANT _____
Firm Name/Principal

Certifies or affirms the truthfulness and accuracy of the content of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. section 3801 et seq. are applicable.

Signature and Title of Authorized Official: _____

**BIDDER'S CERTIFICATION OF COMPLIANCE WITH BUY AMERICA
REQUIREMENTS FOR STEEL, IRON AND MANUFACTURED PRODUCTS**

(For all Contracts in Excess of \$150,000)

One of the following certifications must be completed and furnished with the Bid. Failure to provide the certification will result in your bid being declared non-responsive and rejected. Details regarding these certifications may be found in 49 C.F.R Part 661, entitled Buy America Requirements.

**CERTIFICATION REQUIREMENT FOR PROCUREMENT OF
STEEL, IRON, MANUFACTURED PRODUCTS OR CONSTRUCTION MATERIALS**

Certificate of Compliance with 49 USC 5323 (j)(1) Regarding Steel, Manufactured Products and Construction Materials

The Bidder hereby certifies that it will comply with the requirements of 49 USC §5323(j)(1), Build America, Buy America Act (BABA), Public Law 117-58, div. G, §§ 70901-27 and the applicable regulations in 49 CFR Part 661.

*Signature*_____ *Date*_____

*Title*_____ *Company Name*_____

Certificate of Non-compliance 49 USC § 5323(j)(1) Regarding Steel, Manufactured Products and Construction Materials

The Bidder hereby certifies that it cannot comply with the requirements of 49 USC § 5323(j)(1) or Build America, Buy America Act (BABA), Public Law 117-58, div. G, §§ 70901-27, but it may qualify for an exception to the requirements pursuant to 49 USC § 5323(j)(2)(B) or (j)(2)(D) and regulations in 49 CFR 661.7.

*Signature*_____ *Date*_____

*Title*_____ *Company Name*_____

BIDDER'S CERTIFICATION OF COMPLIANCE WITH CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

By submission of this bid, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, hereby certifies:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. §§ 7401-7671q), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251-1388) and Executive Order 11738, is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) Enforcement and Compliance History Online (ECHO) (echo.epa.gov). Bidder will not use any violating facilities and will report to FTA the use of any facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities" and any violations of the use of prohibited facilities.
2. That the bidder agrees to comply and remain in compliance with all the requirements of section 114 of the Clean Air Act (42 U.S.C. § 7414) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. § 1318) and all regulations and guidelines listed hereunder.
3. That the successful bidder shall promptly notify SBCTA of the receipt of any communication from the Director, Office of Federal Activities, and EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the successful bidder agrees to include or cause to be included these requirements in every nonexempt subcontract, and further agree to take such action as the government may direct as a means of enforcing such requirements.
5. That the bidder will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1389).

Signature and Title of Authorized Official: _____

PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

The Bidder represents that—

- (a) It ☐ has ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
- (b) It ☐ has ☐ has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

CERTIFICATE OF COMPLIANCE WITH INSURANCE REQUIREMENTS

This form must be completed in its entirety and submitted along with
Contractor's response to the Bid.

INSURANCE REQUIREMENTS (check appropriate boxes below):

- ☐ Contractor has provided a copy of the insurance requirements contained in the San Bernardino County Transportation Authority (SBCTA) Contract to its agent/broker for review and discussion.

AND

- ☐ Contractor certifies that the company/individual is fully prepared to comply with the insurance requirements as detailed in the SBCTA Contract.

OR

- ☐ Contractor has identified areas of conflict with the insurance requirements and will procure the required insurance per the requirements within 10 days of the Notice of Award.

Company/Individual Name

Print Name of Authorized Official

Signature of Authorized Official

Date Signed

Address

Phone Number

Email Address

Broker Information:

Name:

Address

Phone Number

Email Address

CONTRACTOR QUESTIONNAIRE

CONTRACTOR NAME: _____

1. BUSINESS ORGANIZATION

1.1 How many years have you been in business? _____

1.2 How many years have you been in business under your current name? _____

1.2.1 Under what other names have you conducted business? _____

1.3 Name(s) and title(s) of person(s) authorized to execute this contract on behalf of your business. Attach appropriate documentation demonstrating signature authority (e.g. Corporate Resolution, Board Minutes, Operating Agreement, Articles of Organization, etc.).

1.4 If your business is a corporation, answer the following:

1.4.1 Date of incorporation: _____

1.4.2 State of incorporation: _____

1.4.3 California Secretary of State Entity ID Number: _____

1.4.4 Names and titles of corporate officers: _____

1.5 If your business is a limited liability company, answer the following:

1.5.1 Date of formation: _____

1.5.2 State of formation: _____

1.5.3 California Secretary of State Entity ID Number: _____

1.5.4 Is LLC managed by managers or members? _____

1.5.5 Manager(s)/Member(s) name(s): _____

1.6 If your business is a partnership, answer the following:

1.6.1 Date of organization: _____

1.6.2 Type of partnership: _____

1.6.3 California Secretary of State Entity ID Number: _____

1.6.4 Name(s) of general partner(s): _____

1.7 If your business is individually owned, answer the following:

1.7.1 Date of organization: _____

1.7.2 Name of owner: _____

1.8 If the form of your business is other than those listed above, describe it and name the principals:

1.9 Number of owned autos: _____

1.10 Number of employees: _____

2. LICENSING

2.1 List jurisdictions and trade categories in which your business is legally qualified to do business and indicate registration or license numbers, if applicable.

2.2 List any other certifications held by your business, and the name under which they are held.

3. EXPERIENCE

3.1 List the categories of work that your business normally performs with its own forces.

3.2 List all contracts your business has completed in the past five years, giving the name of project, owner, owner's phone number, account manager, Contract amount, date of completion and percentage of the cost of the work performed with your own forces.

3.3 State average annual amount of _____ services performed during the past five years:

Year _____	\$ _____
Year _____	\$ _____

Year _____	\$ _____
Year _____	\$ _____
Year _____	\$ _____

- 3.4 List the contracts and/or projects your business has in progress, giving the name of the project, owner/contact, contract amount and scheduled completion.

- 3.5 Has your business, under its current name or any previous names, ever failed to complete any work/contract awarded to it? If Yes, please explain. (Attach additional pages if necessary.)

4. CLAIMS AND LAWSUITS

- 4.1 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your business or any its officers? If Yes, please describe. (Attach additional pages if necessary.)

- 4.2 Has your business filed any law suits or requested arbitration with regard to any of its contracts within the last five (5) years? If Yes, please explain. (Attach additional pages if necessary.)

- 4.3 During the past five years, have any complaints or claims been filed with the Department of Fair Employment and Housing (DFEH) and/or the Department of Industrial Relations (DIR) against your business? If Yes, please describe. (Attach additional pages if necessary.)

IRAN CONTRACTING ACT OF 2010 CERTIFICATION FORM

In accordance with Public Contract Code Section 2203, a person (as defined in Public Contract Code Section 2202(e)) is ineligible to, and shall not, bid on, submit a proposal for, enter into or renew, a contract with a public entity for goods or services of one million dollars (\$1,000,000) or more if, at the time of bid or proposal for a new contract or renewal of an existing contract that person:

- a. is identified on a list created pursuant to subsection (b) as a person engaging in investment activities in Iran as described in subsection (a) of Section 2202.5; or
- b. engages in investment activities in Iran as described in subdivision (b) of Section 2202.5.

BY SUBMITTING THIS PROPOSAL OR BID AND SIGNING BELOW, THE BIDDER IDENTIFIED BELOW CERTIFIES AS FOLLOWS (*REQUIRED*: SELECT ONE OF THE FOLLOWING):

- ☐ In accordance with Public Contract Code Section 2204(a), Bidder, at the time the proposal or bid is submitted, it is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person (as defined in Public Contract Code Section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person that engages in investment activities in Iran as described in subdivision (b) of Public Contract Code Section 2202.5.
- ☐ In accordance with Public Contract Code Section 2204(b), Bidder is authorized to submit this bid or proposal pursuant to one of the following (*REQUIRED*: SELECT ONE OF THE FOLLOWING):
 - ☐ FOR USE ONLY BY BIDDERS GRANTED SPECIFIC PERMISSION BY SBCTA TO SUBMIT A PROPOSAL OR BID: Bidder is authorized to submit this proposal or bid pursuant to Section 2203(c) and further certifies all of the following to be true: (1) the investment activities in Iran were made before July 1, 2010; (2) the investment activities in Iran have not been expanded or renewed after July 1, 2010; (3) the appropriate awarding body for SBCTA has determined it to be in the best interest of SBCTA to contract with proposer or bidder; and (4) Bidder has adopted, publicized, and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran;
 - ☐ FINANCIAL INSTITUTIONS ONLY: Bidder certifies it is authorized to submit this proposal or bid pursuant to Section 2203(d) and further certifies it is a financial institution that extends twenty million (\$20,000,000) or more in credit to another person for 45 days or more and the person using the credit to provide goods or services in the energy section of Iran is a person permitted to submit a bid or proposal pursuant to Section 2203(c).

Bidder acknowledges and understands that making a false certification may subject it to civil penalties, termination of existing contract, and ineligibility to bid or proposed on a contract for a period of three (3) years in accordance with Public Contract Code Section 2205.

BIDDER INFORMATION:

Company Name

Address

City**State****Zip Code**

Authorized Representative: Name**Title**

Authorized Representative: Signature**Date**

Phone**Email Address**

ATTACHMENT A – FORM OF CONTRACT

CONTRACT 23-1002891

**BY AND BETWEEN
SBCTA
AND**

FOR

**WEST VALLEY CONNECTOR BRT – PHASE 1
MAINLINE CONSTRUCTION**

This contract (“Contract”) is effective on the Effective Date as defined herein, by and between San Bernardino County Transportation Authority, (“SBCTA”), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715, and _____ (“CONTRACTOR”) whose address is _____. SBCTA and CONTRACTOR are each a “Party” and collectively the “Parties” herein.

RECITALS:

WHEREAS, SBCTA has determined that it requires construction of the Mainline for the West Valley Connector Project – Phase 1; and

WHEREAS, the work described herein cannot be performed by the employees of SBCTA; and

WHEREAS, CONTRACTOR has certified that it has the requisite personnel, experience, materials, and equipment and is fully capable and qualified to perform all work described herein identified herein; and

WHEREAS, CONTRACTOR desires to perform all work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth in this contract.

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE 1. CONTRACT DOCUMENTS

The complete Contract includes all of the following Contract Documents: the Invitation For Bids (IFB) and Addenda; Bidder’s Bid dated [Month, Day, Year]; Performance and Payment Bonds; the Contract Articles (Contract); Prevailing Wage Rates (Exhibit A); completed Forms and Certifications (Exhibit B); Regulatory Requirements (Exhibit C); Special Provisions (Exhibit D, including Labor Surcharge and Equipment Rental Rates

found in SP-18); Technical Specifications (Exhibit E); and Project Plans dated March 6, 2023.

ARTICLE 2. BONDS

CONTRACTOR will furnish a Payment Bond, in the form provided by SBCTA in the IFB, in an amount equal to one hundred percent (100%) of the Contract price, and a faithful Performance Bond in the form provided by SBCTA in the IFB, in an amount equal to one hundred percent (100%) of the Contract price, said bonds to be secured from a surety company satisfactory to SBCTA within ten (10) working days of the date of SBCTA's delivery to CONTRACTOR of the Notice of Award this Contract and prior to the commencement of work under this Contract. Bonds shall remain in full force and effect for a period of one (1) year following the date of filing of the Notice of Completion. Notwithstanding any other provision set forth in this Contract, performance by a Surety or Guarantor of any obligation of CONTRACTOR shall not relieve CONTRACTOR of any of its obligations thereunder.

ARTICLE 3. PROMPT PAYMENT/RETENTION

CONTRACTOR is required to pay all subcontractors for satisfactory performance of their work no later than 7 days from the date CONTRACTOR receives payment from SBCTA. SBCTA shall hold retainage from CONTRACTOR of five percent (5%) from each invoice, and shall make prompt and regular incremental acceptances of portions, as determined by SBCTA, of the Contract work and pay retainage to the CONTRACTOR based on these acceptances. The CONTRACTOR or subcontractor(s) shall return all monies withheld in retention from all subcontractors within 7 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the Contract work. Any delay or postponement of payment may take place only for good cause and with SBCTA's prior written approval. Any violation of these provisions shall subject CONTRACTOR to the penalties, sanctions, and other remedies specified in section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the CONTRACTOR or subcontractor in the event of: a dispute involving late payment or nonpayment by the CONTRACTOR; deficient subcontractor performance; and/or non-compliance by a subcontractor. This Article applies to DBE and non-DBE subcontractors. Refer to Special Provision 11 (SP-11) Section A, Prompt Payment to Subcontractors, for additional requirements.

ARTICLE 4. COMPENSATION

4.1 SBCTA agrees to pay, and CONTRACTOR agrees to accept as full payment for the work outlined in the Contract documents, the lump sum of \$ _____ (enter dollar and cents amount) DOLLARS AND CENTS (), per approved schedule of values and based on the percentage of progress achieved, subject to additions and deductions, if any, in accordance with said documents. Progress payments shall not be made more

often than once each thirty (30) days, nor shall the amount paid be in excess of ninety-five percent (95%) of either the pro-rata amount due for completed work as the progress payment date or of the full payment amount of the Contract at time of completion. Payment requests shall not be deemed properly completed unless certified payrolls and any other mandatory submittals have been properly completed and submitted for each week worked during the time period covered by said payment request. Final payment to be made after acceptance of the Project. The Schedule of Values presented on the next page is incorporated into this Contract by this reference..

- 4.2 Pursuant to California Public Contract Code section 22300, CONTRACTOR has the option to deposit securities with an Escrow Agent acceptable to SBCTA as a substitute for retention earnings required to be withheld. Alternatively, CONTRACTOR may submit a written request to SBCTA, who shall make payments of the retention amount directly to the Escrow Agent. The market value of the securities deposited at the time of substitution shall be at least equal to the cash amount required to be withheld as retention under this Contract. CONTRACTOR shall be responsible for paying all fees incurred by the Escrow Agent in administering the Escrow Account. Securities eligible for investment under this section shall include those listed in section 16430 of the Government Code.
- 4.3 In addition, on any partial payment made after 95 percent of the work has been completed, SBCTA may reduce the amount withheld from payment pursuant to the requirements of this Article to such lesser amount as SBCTA determines is adequate security for the fulfillment of the balance of the work and other requirements of the Contract, but in no event will that amount be reduced to less than 125 percent of the estimated value of the work yet to be completed as determined by the Engineer. A reduction in retention will only be made upon the written request of the Contractor and shall be approved in writing by the surety on the Performance Bond and by the surety on the Payment Bond. The approval of the surety shall be submitted to the Director of Transit and Rail, the signature of the person executing the approval for the surety shall be properly acknowledged, and the power of attorney authorizing the person to give that consent must either accompany the document or be on file with SBCTA.

**INSERT ACCEPTED
BID SCHEDULE HERE
AFTER AWARD OF
PROJECT**

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONTRACTOR shall pay when due, and the compensation set forth in this Contract shall be inclusive of, all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONTRACTOR; and d) all other governmental fees and taxes or charges of whatever nature applicable to CONTRACTOR to enable it to conduct business.

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SBCTA for the continuance of work performed by the CONTRACTOR, work directly or indirectly involved may be suspended or terminated by SBCTA at the end of the period for which funds are available. When SBCTA becomes aware that any portion of work will or may be affected by a shortage of funds, it will promptly notify CONTRACTOR. Nothing herein shall relieve SBCTA from its obligation to compensate CONTRACTOR for work already performed pursuant to this Contract. No penalty shall accrue to SBCTA in the event this provision is exercised.

ARTICLE 7. PERMITS AND LICENSES

CONTRACTOR agrees that he/she is currently the holder of a valid license as a CONTRACTOR in the State of California and that the license is the correct class of license for the work described in the project plans and specifications. CONTRACTOR further agrees to maintain license through the entire duration of Contract without additional compensation from SBCTA. CONTRACTOR also agrees to keep current all current permits required throughout the duration of the Project.

Refer to Special Provision 02 (SP-02) for additional requirements.

ARTICLE 8. PERIOD OF PERFORMANCE

The Contractor shall complete all or any designated portion of the Work within the time set forth in the Technical Specifications, 01 31 99, Section 1.5, Period of Performance.

ARTICLE 9. DOCUMENTATION AND RIGHT TO AUDIT

CONTRACTOR shall provide SBCTA, the U.S. Department of Transportation (DOT), including but not limited to the Federal Transit or Federal Railroad Administration, and the Comptroller General of the United States, or other authorized representatives or agents of SBCTA, access to CONTRACTOR's records which are directly related to this Contract for the purpose of inspection, auditing or copying. CONTRACTOR shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by SBCTA, except in the event of litigation or settlement of claims arising out of this Contract in which case CONTRACTOR agrees to maintain records through the conclusion of all such

litigation, appeals or claims related to this Contract. CONTRACTOR further agrees to maintain separate records for costs of work performed by change order. CONTRACTOR shall allow SBCTA, Caltrans, FHWA or FTA, or their representatives or agents to reproduce any materials as reasonably necessary.

ARTICLE 10. SCHEDULE

CONTRACTOR agrees to complete the work within the time period as stipulated in the Technical Specifications Section 01 31 99. CONTRACTOR shall incur no costs and shall not perform or furnish any work, services or equipment under this contract, unless and until SBCTA has issued a written Limited Notice to Proceed (LNTP) or Notice to Proceed (NTP), whichever is first. Each of the notices shall detail what work, services or equipment may be furnished.

ARTICLE 11. NONDISCRIMINATION/ EQUAL EMPLOYMENT OPPORTUNITY

11.1 CONTRACTOR agrees to comply with the Equal Employment Opportunity (EEO) regulations for federally assisted programs of the Department of Transportation (DOT), Title 49 CFR Part 21 as they may be amended from time to time, which are herein incorporated by this reference and made part of this Contract. The following minimum specific requirement EEO regulations:

11.1.1 CONTRACTOR will work with SBCTA and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the Contract.

11.1.2 CONTRACTOR will accept as its operating policy the following statement: "It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

11.2 EEO Officer: CONTRACTOR will designate and submit to SBCTA in writing the EEO Officer who will have the responsibility for, and must be capable of, effectively administering and promoting an active CONTRACTOR program of EEO, and who must be assigned adequate authority and responsibility to do so.

11.3 Dissemination of Policy: All employees of the CONTRACTOR who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONTRACTOR's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

11.3.1 Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at

which time the CONTRACTOR's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

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

- 11.5.1 CONTRACTOR will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- 11.5.2 CONTRACTOR will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- 11.5.3 CONTRACTOR will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONTRACTOR will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- 11.5.4 CONTRACTOR will promptly investigate all complaints of alleged discrimination made to the CONTRACTOR in connection with his obligations under this Contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONTRACTOR will inform every complainant of all of his avenues of appeal.
- 11.6 Training and Promotion: CONTRACTOR will assist in locating, qualifying, and increasing the skills of minority group and women employees and applicant for employment.
- 11.6.1 Consistent with CONTRACTOR'S workforce requirements and as permissible under Federal and State regulations, the CONTRACTOR shall make full use of training programs, i.e. apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
- 11.6.2 CONTRACTOR will advise employees and applicants for employment of available training programs and entrance requirements for each.
- 11.6.3 CONTRACTOR will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
- 11.7 Unions: If CONTRACTOR relies in whole or in part upon unions as a source of employees, CONTRACTOR will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by CONTRACTOR, either directly or through a CONTRACTOR's association acting as agent, will include the procedures set forth below:

- 11.7.1 CONTRACTOR will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- 11.7.2 CONTRACTOR will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- 11.7.3 CONTRACTOR is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to CONTRACTOR, CONTRACTOR shall so certify to SBCTA and shall set forth what efforts have been made to obtain such information.
- 11.7.4 In the event the union is unable to provide CONTRACTOR with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, CONTRACTOR will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which CONTRACTOR has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents CONTRACTOR from meeting the obligations pursuant to Executive Order 11246, as amended, such CONTRACTOR shall immediately notify SBCTA
- 11.8 CONTRACTOR shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall notify all potential subcontractors and suppliers of his/her EEO obligations under this Contract. Disadvantaged business enterprises (DBEs), as defined in 49 CFR Part 26, shall have equal opportunity to compete for and perform subcontracts the CONTRACTOR enters into pursuant to this contract. CONTRACTOR will use his/her best efforts to ensure subcontractor compliance with their EEO obligations.
- 11.9 Records and Reports: CONTRACTOR shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three (3) years following completion of the Contract work and shall be available at reasonable times and places for inspection by authorized representatives of SBCTA. The records kept by the CONTRACTOR shall document the following: The number of minority and non-minority group members and women employed in each work classification on the project; the progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.

11.9.1 CONTRACTOR will submit an annual report to SBCTA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. CONTRACTOR will be required to collect and report training data.

ARTICLE 12 CONFLICT OF INTEREST

CONTRACTOR agrees that it presently has no interest financial or otherwise, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of work required under this Contract or be contrary to the interests of SBCTA as to the Project. CONTRACTOR further agrees that in the performance of this Contract, no person having any such interest shall be employed. CONTRACTOR is obligated to fully disclose to SBCTA, in writing, any conflict of interest issues as soon as they are known to CONTRACTOR. CONTRACTOR acknowledges that no member of or delegate to the Congress of the U.S. shall have any interest, direct or indirect, in this Contract or the benefits thereof.

ARTICLE 13. REPRESENTATIONS

All work supplied by CONTRACTOR under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONTRACTOR agrees that the work performed shall conform to all drawings, plans and specifications herein.

ARTICLE 14. PROPRIETARY RIGHTS/CONFIDENTIALITY

14.1 If, as part of this Contract, CONTRACTOR is required to produce materials, documents, data, or information ("Products"), then CONTRACTOR, if requested by SBCTA, shall deliver to SBCTA the original of all such Products, which shall become the property of SBCTA.

14.2 All materials, documents, data or information obtained from SBCTA's data files or any SBCTA-owned medium furnished to CONTRACTOR in the performance of this Contract will at all times remain the property of SBCTA. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONTRACTOR without the express written consent of SBCTA.

14.3 Except as reasonably necessary for the performance of Work, CONTRACTOR agrees that it, its employees, agents, and subcontractors will hold in confidence and not divulge to third parties without prior written consent of SBCTA, any information obtained by CONTRACTOR from or through SBCTA in connection with CONTRACTOR's performance of this Contract, unless: (a) the information was known to CONTRACTOR prior to obtaining same from SBCTA pursuant to a prior contract; (b) the information was obtained at the time of disclosure to CONTRACTOR, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONTRACTOR or its employees, agents, or subcontractors; or (c) the information was obtained by CONTRACTOR from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to

CONTRACTOR's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONTRACTOR for SBCTA in the performance and completion of CONTRACTOR's Work under this Contract, shall be kept confidential until released in writing by SBCTA, except to the extent such materials and information become a part of public domain information through no fault of CONTRACTOR, or its employees or agents.

14.4 CONTRACTOR shall not release any reports, information or promotional materials, or allow for the use of any photos of the project for any purposes, without prior written approval from SBCTA. CONTRACTOR shall not use SBCTA's name or photographs of the Project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA.

14.5 All press releases relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by the Parties.

14.6 All information designated as Sensitive Security Information (SSI) shall be protected from disclosure as provided in SP-17.

14.7 CONTRACTOR, its employees, agents and subcontractors shall be required to comply with SBCTA's Confidentiality Policy; anyone who may have access to Personally Identifiable Information ("PII") and/or Sensitive Security Information ("SSI") will be required to execute a Confidentiality Agreement. SSI shall be handled and protected as set forth in Special Provision 17 (SP-17)

ARTICLE 15. TERMINATION

15.1 Termination for Convenience - SBCTA shall have the right at any time, with or without cause, to terminate further performance of Work by giving thirty (30) calendar days written notice to CONTRACTOR specifying the date of termination. On the date of such termination stated in said notice, CONTRACTOR shall promptly discontinue performance of Services and shall preserve work in progress and completed Work, pending SBCTA's instruction, and shall turn over such Work in accordance with SBCTA's instructions.

15.1.1 CONTRACTOR shall deliver to SBCTA all deliverables prepared by CONTRACTOR or its subcontractors or furnished to CONTRACTOR by SBCTA. Upon such delivery, CONTRACTOR may then invoice SBCTA for payment in accordance with the terms herein.

15.1.2 If CONTRACTOR has fully and completely performed all obligations under this Contract up to the date of termination, CONTRACTOR shall be entitled to receive from SBCTA as complete and full settlement for such termination a pro rata share of the contract cost and a pro rata share of any fixed fee, for such Services satisfactorily executed to the date of termination.

15.1.3 CONTRACTOR shall be entitled to receive the actual cost incurred by CONTRACTOR to return CONTRACTOR's field tools and equipment, if any, to it or its suppliers' premises, or to turn over work in progress in accordance with SBCTA's instructions plus the actual cost necessarily incurred in effecting the termination.

15.2 Termination for Cause - In the event CONTRACTOR shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONTRACTOR or a receiver shall be appointed on account of its solvency, or if CONTRACTOR shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SBCTA may, without prejudice to any other rights or remedies SBCTA may have: (a) hold in abeyance further payments to CONTRACTOR; (b) stop any Work of CONTRACTOR or its subcontractors related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONTRACTOR specifying the date of termination. In the event of such termination by SBCTA, SBCTA may take possession of the deliverables and finish Services by whatever method SBCTA may deem expedient. A waiver by SBCTA of one default of CONTRACTOR shall not be considered to be a waiver of any subsequent default of CONTRACTOR, nor be deemed to waive, amend, or modify any term of this Contract.

15.2.1 CONTRACTOR shall deliver to SBCTA all finished and unfinished products prepared under this Contract by CONTRACTOR or its subcontractors or furnished to CONTRACTOR by SBCTA within ten (10) working days of said notice.

15.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCTA, satisfactory in form and content to SBCTA, and verified by SBCTA. In no event shall CONTRACTOR be entitled to any prospective profits or any damages because of such termination.

ARTICLE 16. STOP WORK ORDER

Upon failure of CONTRACTOR or its subcontractors to comply with any requirements of this Contract, SBCTA shall have the right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with the Termination provision herein.

ARTICLE 17. CLAIMS

SBCTA shall not be bound to any adjustments in the Contract amount or schedule unless expressly agreed to by SBCTA in writing. SBCTA shall not be liable to CONTRACTOR for any claim asserted by CONTRACTOR after final payment has been made under this Contract.

Refer to Special Provision 15 (SP-15) for additional provisions.

Per Public Contract Code (PCC) § 9204:

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) “Claim” means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) “Contractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3)(A) “Public entity” means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) “Public entity” shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code .

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) “Public works project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) “Subcontractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d)(1)(A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2)(A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any

disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

ARTICLE 18. INSURANCE

18.1 CONTRACTOR shall furnish SBCTA with original Certificates of Insurance, including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page(s) of the CGL policy listing all policy endorsements, no less than 10 days after award of contract. SBCTA reserves the right to require full-certified copies of all Insurance coverages and endorsements. Prior to commencing the Work, at all times during the performance of the Work, and for such additional periods as required herein, CONTRACTOR shall, at CONTRACTOR's sole expense, procure and maintain insurance coverage with the following minimum requirements, and shall require all subcontractors of every tier performing any portion of the Work to procure and maintain such insurance as specified below:

18.2 Commercial General Liability Insurance – The policy must include the following:

- CONTRACTOR shall maintain a commercial general liability policy written on an occurrence form that shall provide coverage at least as broad as the coverage provided by ISO form CG 00 01. The Indemnified Parties shall be named, by specific endorsement, as Additional Insureds using ISO form CG 20 10 10 01 and ISO form CG 20 37 10 01, or their respective equivalent forms, to include completed operations coverage and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability of not less than **\$35,000,000 per occurrence**.
- The policy shall, at a minimum, include coverage for any and all of the following: bodily injury, broad form property damage, personal injury coverage with coverage for employee and contractual exclusions removed, 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.
 - \$35,000,000 per occurrence limit for property damage or bodily injury
 - \$2,000,000 per occurrence limit for personal injury and advertising injury

- \$35,000,000 per occurrence limits for products/completed operations coverage (ISO Form 20 37 10 01)
- Contractor shall maintain coverage in full force for no less than (10) TEN years (Tail Coverage) after completion of all work, counting from the date SBCTA issues the last payment for any services under this contract.
- Completed Operations coverage shall extend for ten (10) years, either through continual maintenance of completed operations coverage in the Contractors corporate insurance program or by purchasing a project specific completed operation coverage policy. Contractor shall maintain the completed operations coverage in full force for no less than (10) TEN years (Tail Coverage) after completion of all work (or termination of agreement for any reason), counting from the date SBCTA issues the last payment to contractor under this contract.
- 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).
- Contractor’s errors and omissions coverage shall be provided.
- The policy shall be endorsed with ISO form CG 20 01 04 13 or an ISO form that is substantially similar and acceptable to SBCTA to provide: “This insurance will be primary and noncontributing with any other insurance of the Additional Insureds.”
- Coverage is to be on an “occurrence” form. “Claims made” and “modified occurrence” forms are not acceptable.
- A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

All subcontractors of any tier performing any portion of the Work for CONTRACTOR shall also obtain and maintain the CGL insurance coverage with limits not less than:

- Each occurrence limit: \$1,000,000
- General aggregate limit: \$2,000,000
- Personal injury and advertising limit \$1,000,000
- Products-completed operations aggregate limit \$2,000,000

18.3 Umbrella/Excess CGL Insurance – The policy must include the following:

If the CONTRACTOR 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’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.
- 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.
- The umbrella policy shall have concurrent effective dates with the primary

policies.

There shall be no statement limiting the coverage provided to the parties listed as additionally insureds or as indemnitees below.

18.4 Commercial Auto Insurance – The policy must include the following:

- A total limit of liability of not less than **\$10,000,000** each accident. 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 18.3 Umbrella/Excess CGL as listed in 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 services.
- Combined single limit Bodily Injury and Property Damage Liability insurance
- If any Hazardous material is carrier using covered vehicle(s), then pollution liability broadened coverage for covered autos (CA 99 48) shall be provided and the auto liability insurance policies shall be endorsed to include Motor Carrier Act Endorsement-hazardous material clean-up (MCS-90).

The commercial automobile liability insurance shall be written on the most recent edition of ISO Form CA 00 01 or equivalent acceptable to SBCTA.

18.5 Workers' Compensation/Employer's Liability Insurance – The policies must include the following:

- Coverage A. Statutory Benefits
- Coverage B. Employer's Liability
- Bodily Injury by accident - \$1,000,000 per accident
- Bodily Injury by disease - \$1,000,000 policy limit/\$1,000,000 each employee

Such policies shall contain a waiver of subrogation (Form WC 00 03 13) in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Work by CONTRACTOR or any subcontractor of any tier. All subcontractors of any tier performing any portion of the Work for CONTRACTOR shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONTRACTOR and all parties named as Indemnitees in Article 19 below. SBCTA and CONTRACTOR must be certificate holders and must be provided at least 30 days advance notice of cancellation, unless the cancellation is for non-payment, then at least 10 days advance notice of cancellation shall be provided.

18.6 Builder's Risk Insurance –

CONTRACTOR 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 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’s services and expenses required as a result of such loss. During the Project construction period, CONTRACTOR 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 or subcontractor shall be endorsed to provide a waiver of subrogation in favor of the Additional Insureds identified below, CONTRACTOR and all subcontractors of every tier. Further, CONTRACTOR hereby releases, and shall cause its subcontractors to release, the Indemnitees identified in Article 19 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 \$100,000.00 per loss, other than earthquake or flood which may have deductible or self-insured retentions up to 5% of the total value, not exceeding \$750,000.00 for earthquake and \$100,000 for flood coverages. The policy may have sub-limits not less than the following:

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

18.7 Contractor’s Pollution Liability -

Pollution liability limits shall be no less than \$4,000,000 per occurrence and aggregate.

Coverage shall include coverage for clean-up costs, third-party bodily injury and property damage, provided property damage coverage includes loss of use of damaged property or of property that has been physically injured or destroyed, resulting from pollution conditions caused by contracting operation or activities. Coverage required in this section shall cover release or escape of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, gasses, waste materials, or other irritants, contaminates, or pollutants. The policy shall also contain coverage for transportation and off-site disposal of materials.

18.8 Environmental Insurance and Contractor’s Pollution Liability

Coverage with limits at \$10,000,000 will be required while all work is performed at the Ontario International Airport. Please refer to Agreement 21-1002697 (listed in Appendix 1 to Special Provision 28) section 13 and special condition 30 for more details.

18.9 Railroad Protective Liability – (Only required if working within 50 feet of railroad property)

Contractor shall provide coverage at limits and with terms required by railroad owner and operator, if required by any 3rd party railroad and only if or when there is any work under this contract that requires entry onto railroad property. Said policy would be required at all times if

there is any work within 50 feet of any railroad right of way.

18.10 General Provisions

NOTE THAT ALL OF THE WORK PERFORMED AT THE ONTARIO INTERNATIONAL AIRPORT (OIAA) AND ALL WORK INVOLVING THE INLAND EMPIRE UTILITY AGENCY (IEUA) INFRASTRUCTURE OR EASEMENTS WILL REQUIRE THAT THE CONTRACTOR MEET THE INSURANCE REQUIREMENTS OF ONTARIO INTERNATIONAL AIRPORT AUTHORITY COOPERATIVE AGREEMENT 21-1002697 (ATTACHED HEREIN TO APPENDIX 1 OF SPECIAL PROVISION 28) AND THE IEUA INSURANCE REQUIREMENTS (ATTACHED TO THE PLANS DATED MARCH 6, 2023).

THE CONTRACTOR WILL MEET THE HIGHEST LIMITS AND BROADEST COVERAGE REQUIREMENTS OF EITHER SBCTA, OIAA OR IEUA.

18.10.1 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.

18.10.2 Additional Insured Coverage. All policies, except those for Workers' Compensation and Contractors Pollution Liability, shall be endorsed by ISO Form CG 20 10 11 85, or if not available, then ISO Form CG 20 38, and shall name San Bernardino County Transportation Authority, Omnitrans, Ontario International Airport Authority, The Mills Corporation, City of Ontario, City of Rancho Cucamonga, City of Pomona, City of Montclair, Southern California Edison, Inland Empire Utilities Agency, Monte Vista Water District and Cucamonga Valley Water District, and their officers, directors, members, employees, agents and volunteers, as Additional Insureds, (the "Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR under this Contract, coverage for such Additional Insured coverages 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 the Additional Insureds to vicarious liability but shall allow coverage for the Additional Insureds to the full extent provided by the policy. Contractor shall provide insurance coverage to the Ontario International Airport Authority in accordance with the OIAA Agreement, No. 21-1002697 identified in SP-28, Appendix 1.

18.10.3 Proof of Coverage – Evidence of insurance in a form acceptable to SBCTA, 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 shall submit complete copies of all required insurance policies within ten

(10) business days of a written request by SBCTA.

- 18.10.4 Deductibles and Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONTRACTOR 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 will pay, and shall require its sub-CONTRACTORS 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 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 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. The Contractor's policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any Contractor's deductible or SIR.
- 18.10.5 CONTRACTOR's and Subcontractors' Insurance Will Be Primary - All policies required to be maintained by the CONTRACTOR or any subcontractor with the exception of Professional Liability and Worker's Compensation shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13), to be primary coverage, and any coverage carried by any of the Additional Insureds shall be excess and non-contributory. Further, none of CONTRACTOR'S or subcontractors' pollution, automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an Additional Insured against a named insured.
- 18.10.6 Waiver of Subrogation Rights - To the fullest extent permitted by law, CONTRACTOR hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other CONTRACTOR, subcontractor or sub-subcontractor performing work or rendering services on behalf of SBCTA, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, CONTRACTOR shall require similar written express waivers and insurance clauses from each of its subcontractors of every tier. CONTRACTOR 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 from waiving the right of subrogation prior to a loss or claim.
- 18.10.7 Cancellation - If any insurance company elects to cancel or non-renew coverage for any reason, CONTRACTOR will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONTRACTOR will provide SBCTA ten (10) days prior written notice. In any event, CONTRACTOR will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONTRACTOR receives within one business day after CONTRACTOR receives it by submitting it to SBCTA at

insurance@gosbcta.com to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.

- 18.10.8 Enforcement – SBCTA may take any steps as are necessary to assure CONTRACTOR'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 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 or withhold such expense from amounts owed CONTRACTOR, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONTRACTOR 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 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, 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.
- 18.10.9 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.
- 18.10.10 Subcontractors' Insurance - Insurance required of the CONTRACTOR shall be also provided by subcontractors or by CONTRACTOR on behalf of all subcontractors to cover their services performed under this Contract. CONTRACTOR 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 shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subcontractor.
- 18.10.11 Higher limits. The Insurance obligations under this agreement shall be the greater of 1- all the Insurance coverage and limits carried by or available to the Contractor; or 2- the minimum Insurance requirements shown in this agreement. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to SBCTA. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the indemnity or other obligations of the Contractor under this agreement.
- 18.10.12 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'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 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 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 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 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.

- 18.10.13 Project Specific Insurance - All insurance coverage required to be provided by CONTRACTOR, 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.
- 18.10.14 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 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.
- 18.10.15 Review of Coverage – 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. SBCTA may at any time review the coverage, form, and amount of insurance required under this contract, and may require the CONTRACTOR 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, whereupon the CONTRACTOR 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.

ARTICLE 19. INDEMNITY

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by SBCTA) and hold harmless the San Bernardino County Transportation Authority, Omnitrans, City of Pomona, City of Montclair, City of Ontario, City of Rancho Cucamonga, Ontario International Airport Authority, The Mills Corporation, Southern California Edison, Inland Empire Utilities Agency, Monte Vista Water District and Cucamonga Valley Water District 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's duty to defend and indemnification obligation shall apply regardless of the existence or degree of fault of any of the Indemnitees. The duty of CONTRACTOR 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'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.

ARTICLE 20. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONTRACTOR under this Contract, shall become the property of SBCTA when prepared, whether delivered to SBCTA or not.

ARTICLE 21. RECORD AND INSPECTION AND AUDITING

SBCTA or any of its designees, representatives or agents, including but not limited to the U.S. Department of Transportation, or Federal Transit Administration, shall at all times have access during normal business hours to CONTRACTOR's operations and products wherever they are in preparation or progress, and CONTRACTOR shall provide sufficient, safe and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SBCTA shall not be deemed to be a waiver of any of its rights to require CONTRACTOR to comply with the Contract or to subsequently reject any unsatisfactory Work or products.

ARTICLE 22. INDEPENDENT CONTRACTOR

CONTRACTOR is and shall be at all times an independent contractor. Accordingly, all Work provided by CONTRACTOR shall be done and performed by CONTRACTOR under the sole supervision, direction and control of CONTRACTOR. SBCTA shall rely on CONTRACTOR for results only and shall have no right at any time to direct or supervise CONTRACTOR or CONTRACTOR's employees in the performance or as to the manner, means and methods by which work is to be performed. All personnel furnished by CONTRACTOR pursuant to this Contract and all representatives of CONTRACTOR shall be and remain the employees or agents of CONTRACTOR or of CONTRACTOR's subcontractors at all times and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCTA.

ARTICLE 23. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any Party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and attorney's fees. This Article shall not apply to those costs and Attorney's fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

ARTICLE 24. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue

for any action or claim brought by any Party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

ARTICLE 25. FEDERAL, STATE AND LOCAL LAWS

CONTRACTOR warrants that in performance of this Contract, it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

ARTICLE 26. PRECEDENCE

The following order of precedence shall apply:

1. Exhibit C, Regulatory (FTA) Requirements
2. Change Orders, whichever occurs last, shall take its precedence from the term(s) it amends
3. Contract Articles (Contract/Agreement)
4. Exhibit A, Prevailing Wage Rates
5. Exhibit B, Completed Forms and Certifications
6. Exhibit D, Special Provisions
7. Exhibit E, Technical Specifications
8. Permits issued by Authorities Having Jurisdiction
9. Project Plans dated March 6, 2023
10. Exhibit F, IFB including all Addenda
11. Bidder's Bid

ARTICLE 27. COMMUNICATIONS AND NOTICES

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given, and received: (a) upon actual delivery, if delivery is personally made; or if made by fax or email during regular business hours; (b) the first business day following delivery by fax or email when made not during regular business hours; or (c) the fourth business day following deposit of such notice into the United States Mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time by a notice given in accordance with this Article. CONTRACTOR shall notify SBCTA of any changes within ten (10) business days of the change.

To CONTRACTOR	To SBCTA
	San Bernardino County Transportation Authority
	1170 W. 3rd Street, 2nd Floor
	San Bernardino, CA 92410-1715

Attn:	Attn: Joy Buenaflor Deputy Director of Transit and Rail – Capital Delivery
	cc: Shaneka Morris, Procurement Manager
Phone:	Phone: (909) 884-8276
Email:	jbuenaflor@gosbcta.com
Email cc:	procurement@gosbcta.com

ARTICLE 28. FEDERAL CHANGES

CONTRACTOR shall at all times comply with all applicable Federal Transit Administration regulations, policies, procedures and directives, including without limitation those listed directly or by reference in this Contract, as they may be amended time to time through the term of this Contract. CONTRACTOR's failure to comply shall constitute a material breach of Contract.

ARTICLE 29. NO OBLIGATION BY THE FEDERAL GOVERNMENT

(1) CONTRACTOR acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the CONTRACTOR or any other party (whether or not a Party to the Contract) pertaining to any matter resulting from the Contract. (2) CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

ARTICLE 30. LIQUIDATED DAMAGES

Should CONTRACTOR fail to complete all work within the time specified herein, including any written authorized changes, the actual damages to SBCTA for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, CONTRACTOR shall pay SBCTA the sum of \$15,000 for each calendar day of delay as identified in the weekly statement of working days issued by SBCTA as governed by Special Provisions, not to exceed twenty-five percent (25%) of the contract value. SBCTA shall not withhold liquidated damages if the delay is determined by SBCTA to be excusable in accordance with the Force Majeure article of this Contract. SBCTA may extend the period of performance of this Contract when, in its sole judgment there is sufficient justification to do so.

ARTICLE 31. ASSIGNMENT

CONTRACTOR agrees not to sell, transfer, assign, or otherwise dispose of any contract part either voluntarily or by operation of law without prior written consent from SBCTA.

ARTICLE 32. SUBCONTRACTS

32.1 CONTRACTOR shall perform with its own organization Contract work amounting to not less **than 30 percent** (or a greater percentage if specified elsewhere in the Contract) of the total original Contract price, excluding any specialty items designated by SBCTA. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original Contract price before computing the amount of work required to be performed by CONTRACTOR's own organization.

32.1.1 "Its own organization" shall be construed to include only workers employed and paid directly by the prime CONTRACTOR and equipment owned or rented by the prime CONTRACTOR, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime CONTRACTOR.

32.1.2 "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract. The contract amount upon which the requirements set forth in this contract is computed includes the cost of material and manufactured products, which are to be purchased or produced by the CONTRACTOR under the contract provisions.

32.2 CONTRACTOR shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the Contract requirements, and is in charge of all construction operations (regardless of who performs the work), and (b) such other of its own organizational resources (supervision, management, and engineering services) as SBCTA determines is necessary to assure the performance of the Contract.

32.3 No portion of the Contract shall be sublet, assigned or otherwise disposed of except with the prior written consent of SBCTA, or authorized representative, and such consent when given shall not be construed to relieve CONTRACTOR of any responsibility for the fulfillment of the Contract. Written consent will be given only after SBCTA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime Contract. CONTRACTOR does not have the right to make any substitutions of any subcontractor listed in its bid, except in accordance with the State of California Public Contract Code, section 4100 et seq. SBCTA's consent to substitution shall not be deemed to relieve CONTRACTOR of its obligation to fully comply with the requirements of this Contract. CONTRACTOR shall be responsible for all acts and omissions of its employees, subcontractors and their employees. CONTRACTOR is responsible for coordinating all work performed by the subcontractors. SBCTA reserves the right, but not the obligation, to review the subcontractor agreements for this project and to require any modifications so as to conform to the requirements set forth in this Contract.

ARTICLE 33. COORDINATION WITH OTHER CONTRACTS

SBCTA may undertake or award other contracts for work, and CONTRACTOR shall cooperate fully with the other contractors' and SBCTA's employees or agents and carefully fit its own work to such additional work as may be directed by SBCTA. CONTRACTOR shall not commit or

permit any act which will interfere with the performance of work by any other contractor or by SBCTA.

ARTICLE 34. PREVAILING WAGE REQUIREMENTS

- 34.1 All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor or the California Director of the Department of Industrial Relations, whichever is higher, which is attached hereto as Exhibit A and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics.
- 34.2 Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR § 5.5 (a)(1)(iv).

ARTICLE 35. SAFETY

- 35.1 In the performance of this Contract, CONTRACTOR shall comply with all applicable federal, State, and local laws governing safety, health, and sanitation (40 U.S.C. § 3704, 29 U.S.C. §§ 651 et seq., 29 CFR parts 1910 and 1926) and railroads (49 CFR Parts 200 through 272). The CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as SBCTA may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public, and to protect property in connection with the performance of the work covered by the Contract. It is a condition of this Contract, and shall be made a condition of each subcontract which the CONTRACTOR enters into pursuant to this Contract, that CONTRACTOR and any subcontractor shall not permit any employee, in performance of this Contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3704-3705).
- 35.2 Pursuant to 29 CFR § 1926.3, it is a condition of this Contract that the Secretary of Labor or authorized representative thereof shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3704-3705).

ARTICLE 36. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

SBCTA, as the sub-recipient of federal funds, is required to comply with any requirements established by the main recipient (Omnitrans) to involve Disadvantaged Business Enterprises (DBEs) to the maximum extent feasible in all phases of its procurement practices.

The CONTRACTOR agrees to ensure that DBEs as defined in 49 CFR Part 26 have the opportunity to participate in the performance of subcontracts financed in whole or in part with Federal funds provided under the Contract. In this regard, the CONTRACTOR shall take all reasonable steps in accordance with 49 CFR Part 26 so that DBEs have the opportunity to compete for and perform the Work. The CONTRACTOR shall not discriminate on the basis of race, color, religion, sex, age or national origin, in the award and performance of DOT-assisted contracts.

The CONTRACTOR shall supply sufficient information in its payment applications and supporting documentation to enable SBCTA and the FTA to determine the amounts paid to DBE.

ARTICLE 37. ENERGY CONSERVATION

CONTRACTOR agrees to 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 and Conservation Act.

ARTICLE 38. NONSEGREGATED FACILITIES

- 38.1 CONTRACTOR, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. CONTRACTOR agrees that a breach of this certification is a violation of the EEO provisions of this Contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- 38.2 As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time-clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g., disabled parking).
- 38.3 CONTRACTOR agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

ARTICLE 39. INCORPORATION OF FTA TERMS

The preceding CONTRACT provisions include, in part, certain Standard Terms and Conditions required by the United States Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms in the FTA Best Practices Manual Appendix A-1 shall be deemed to control in the event of a conflict with other provisions contained in this Contract. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any SBCTA requests, which would cause SBCTA to be in violation of the FTA terms and conditions.

ARTICLE 40. PROGRAM FRAUD AND FALSE STATEMENTS

CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323 (1)(I) on the Contractor, to the extent the Federal Government deems appropriate. CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ARTICLE 41. SPECIFIC FEDERAL REQUIREMENTS

41.1 Without limiting the generality of the CONTRACTOR's obligations under this Contract to comply with all applicable federal laws and regulations, CONTRACTOR specifically agrees to comply with the following:

41.1.1. Buy America.

CONTRACTOR agrees to comply with 49 U.S.C. 5323(j), the Build America, Buy America Act, Public Law 117-58, div. G §§ 70901-27 (“BABA”), 49 C.F.R. Part 661, guidance in OMB Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure at <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>.; Notice that the Build America, Buy America Requirement for Construction Materials Applies Effective November 10, 2022, and Notice of Proposed Waiver of that Requirement for a Narrow Category of Contracts and Solicitations, 87 FR 68572, which provide that federal funds may not be obligated unless steel, iron, manufactured products, and construction materials used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

CONTRACTOR shall include a mandatory requirement in all agreements it enters into with subcontractors that will be performing Work for this Project. Contractor shall indemnify SBCTA for any loss, liability and expenses arising from CONTRACTOR’s failure to comply with Buy America requirements.

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

ARTICLE 42. GRATUITIES

CONTRACTOR, its employees, agents or representatives shall not offer or give to an officer, official or employee of SBCTA, gifts, entertainment, payments, loans or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

ARTICLE 43. CONFIDENTIALITY

See Article 14.

ARTICLE 44. CONVICT LABOR

In connection with the performance of work under this Contract, CONTRACTOR agrees not to employ any person undergoing sentence of imprisonment at hard labor. This Article does not include convicts who are on parole or probation.

ARTICLE 45. INSPECTION OF SITE

CONTRACTOR acknowledges that it has investigated and satisfied itself as to the conditions affecting the work including, but not restricted to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electricity and roads, and uncertainties of weather, river stages, tides or similar conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. CONTRACTOR fully acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by SBCTA, as well as from information presented by the drawings and specifications made a part of this Contract. Any failure by CONTRACTOR to acquaint itself with the available information will not relieve it from responsibility for the difficulty or cost of interpretations made by CONTRACTOR on the basis of the information made available by SBCTA.

ARTICLE 46. RECYCLED PRODUCTS

CONTRACTOR shall comply with all the requirements of section 6002 of the Resource Conservation and Recovery Act as amended, (42 U.S.C. § 6962), including but not limited to 40 CFR Part 247, as applicable. CONTRACTOR agrees to include this Article in all of its subcontracts.

ARTICLE 47. 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 SBCTA and understands and agrees that SBCTA will in turn report each violation as required to assure notification to FTA and appropriate Environmental Protection Agency (EPA) Regional Office. CONTRACTOR shall include this requirement in each subcontract. exceeding \$1500,000.

ARTICLE 48. DRUG FREE WORKPLACE

CONTRACTOR agrees to comply with the Drug Free Workplace Act of 1990 per Government Code section 8350 et seq.

ARTICLE 49. SEVERABILITY

The partial or complete invalidity in whole or in part, of any one or more of the provisions of this Contract shall not affect the validity or continuing force and effect of any other provision.

ARTICLE 50. FORCE MAJEURE

CONTRACTOR shall not be in default under this Contract in the event that the Work performed by CONTRACTOR is temporarily interrupted or discontinued for any of the following reasons:

riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, natural disasters such as floods, earthquakes, landslides and fires, or other catastrophic events which are beyond the reasonable control of CONTRACTOR and which CONTRACTOR could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the financial inability of the CONTRACTOR to perform or failure of the CONTRACTOR to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the CONTRACTOR.

ARTICLE 51. INCORPORATION OF RECITALS

The Recitals stated above are true and correct and are hereby incorporated into this Contract.

ARTICLE 52. EFFECTIVE DATE

The date that this Contract is executed by SBCTA shall be the Effective Date of this Contract.

----- SIGNATURES ARE ON THE FOLLOWING PAGE -----

IN WITNESS WHEREOF, the Parties hereto have executed this Contract below.

CONTRACTOR

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

By:

Name
Title

By:

Art Bishop
President, Board of Directors

Date:

Date:

Licensed in accordance with an act
providing for registration of contractors.

APPROVED AS TO FORM

License Number

By:

Julianna K. Tillquist
General Counsel

Federal Employer
Identification Number

CONCURRENCE

By:

Shaneka M. Morris
Procurement Manager

EXHIBIT A TO CONTRACT – PREVAILING WAGE RATES

ATTACHMENT B - CONTRACT FORMS

SBCTA

Contract No. 23-1002891

PAYMENT BOND FORM

KNOW ALL MEN BY THESE PRESENTS:

That the San Bernardino County Transportation Authority of the State of California ((SBCTA) and _____ (Principal) have by written agreement dated, __, entered into a contract identified as: _____

CONTRACT No.: 23-1002891 (Contract); and

That, pursuant to law and said Contract, and before entering upon the performance of said Contract, the principal is required to file with SBCTA a good and sufficient bond to secure the payment of labor and materials claims.

NOW, THEREFORE, said Principal and _____, as corporate surety (Surety), (Surety shall be listed in the Insurance Organizations Authorized by the Insurance Commissioner to Transact Business of Insurance in the State of California published by the Department of Insurance, State of California or successor publications), are held firmly bound unto SBCTA in the amount of \$ _____ (\$ _____) for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said principal, his/her or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named or referred to in section 9554 of the California Civil Code, or amounts due under Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the CONTRACTOR and his subcontractors pursuant to section 13020 of the Unemployment Insurance Code with respect to such work and labor as required by Division 4, Part 6, Title 3, Chapter 5 (commencing at section 9550) of the California Civil Code, or this bond, then said Surety will pay for the same, in an amount not to exceed the amount hereinafter set forth.

This bond shall inure to the benefit of any and all persons, companies and corporations named or referred to in section 9554 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

And the said Surety, for value received, hereby stipulates and agrees that all alterations, extensions of time, extra and additional work, and other changes authorized by the Specifications or any part of the Contract may be made without securing consent of the Surety on this bond, and any such actions shall not in any way affect the obligations of the Surety on this bond. Surety does hereby waive notice of any alterations, extensions of time, extra and additional work to the terms of the Contract or to the Specifications.

In the event suit is brought upon this Bond by SBCTA and judgment is recovered, Surety shall pay all costs incurred by SBCTA in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

Principal: _____

Dated _____

Signature of Principal

Surety

Address

City, State and Zip

Dated _____

Signature of Surety

NOTE: Signatures of those executing for Surety MUST be properly acknowledged.

NOTE: This form may be reproduced for transmittal to the Surety for execution.

SBCTA

Contract No. 23-1002891

PERFORMANCE BOND FORM

KNOW ALL MEN BY THESE PRESENTS:

That the San Bernardino County Transportation Authority of the State of California (SBCTA) and _____ (Principal) have by written agreement dated _____, 20____, entered into a contract identified as:

CONTRACT NO. 23-1002891

(Contract); and that the Principal is required under the terms and conditions of said Contract to furnish a bond for the faithful performance of Contract.

NOW, THEREFORE, said Principal and _____, as corporate surety (Surety), (Surety shall be listed in the Insurance Organizations Authorized by the Insurance Commission to Transact Business of Insurance in the State of California published by the Department of Insurance, State of California or successor publications), are held firmly bound unto SBCTA in the amount of \$ _____ (\$ _____) for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the said principal, his/her or its subcontractors, heirs, executors, administrators, successors, or assigns, shall perform all of the covenants, conditions and agreements in said Contract and any alteration made as herein provided, in his/her/its/their part, to be kept and performed at the time, and in the manner therein specified, and shall indemnify and save harmless SBCTA, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force, virtue and affect.

And the said Surety, for value received, hereby stipulates and agrees that all alterations, extensions of time, extra and additional work, and other changes authorized by the Specifications or any part of the contract may be made without securing consent of the Surety on this bond, and any such actions shall not in any way affect the obligations of the Surety on this bond. Surety does hereby waive notice of any alterations, extensions of time, extra and additional work to the terms of the Contract or to the Specifications.

In the event suit is brought upon this Bond by SBCTA and judgment is recovered, Surety shall pay costs incurred by SBCTA in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

Principal: _____

Dated _____

Signature of Principal

Surety

Address

City, State and Zip

Dated _____

Signature of Surety

NOTE: Signatures of those executing for Surety MUST be properly acknowledged.

NOTE: This form may be reproduced for transmittal to the Surety for execution.

DBE FORMS

A. SBCTA'S RESPONSIBILITY

It is the policy of San Bernardino County Transportation Authority (SBCTA) to provide disadvantaged, minority, and women-owned business enterprises, as defined in Title 49 CFR Part 26, an equitable opportunity to participate in all contracting opportunities. SBCTA receives Federal Transit Administration (FTA) funds as a subrecipient to Omnitrans, and is subject to Omnitrans' FTA DBE Program which includes minority and women-owned business enterprises, and is designed to administer contracts, Contractor selection, and all related procurement activities without regard to race, color, religion, disability, political beliefs, age, national origin, gender, veteran status, or cultural background. Accordingly, no firm or individual shall be denied the opportunity to compete for SBCTA contracts by reasons so stated or implied.

In order to ensure that Omnitrans achieves its overall DBE Program goals and objectives, SBCTA has adopted Omnitrans' DBE Program for this procurement, and encourages the participation of small businesses, including DBEs as defined in 49 CFR Part 26, in the performance of contracts financed in whole or in part with U.S. DOT funds.

In the event of any conflicts or inconsistencies between the CFR and Omnitrans' DBE Program with respect to DOT-assisted contracts, the CFR shall prevail.

B. DISADVANTAGE BUSINESS ENTERPRISE PROGRAM

SBCTA, as the subrecipient of FTA funds, is obligated to comply with all rules and regulation set by FTA and the direct recipient of the funds. Phase 1 of the West Valley Connector Project has an overall project DBE goal of 8.5% of the total anticipated Project cost for mainline construction, construction management, and project management. Omnitrans, the direct recipient of funds, has an overall agency DBE goal of 2.9%.

Only DBEs who meet the definition contained within these provisions and who have been certified at the time of Bid opening may be credited toward the overall goal.

Specific instructions and copies of required forms are included in this Attachment.

C. DEFINITIONS

Attached as Attachment "D" are the Regulatory Requirements set by the Federal Transit Administration (FTA) outlining the DBE requirements and regulations of FTA Federal Funds. The following definitions apply to the terms used in these provisions:

1. **"Disadvantaged Business Enterprise (DBE)"** means a small business concern: (a) which is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged 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 (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. **"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 \$23.98 million over the previously three fiscal years.
3. **"Socially and Economically Disadvantaged Individuals"** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.
 - a. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group.
 - b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - c. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - d. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - e. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
 - f. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - g. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - h. Women;
 - i. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

4. **"Unconditionally Owned and Controlled"** means a business: (a) which is at least 51 percent unconditionally and directly owned by one or more socially and economically disadvantaged individuals who are citizens of the United States, except for concerns owned by Indian tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations (CDCs).
 - a. Ownership by one or disadvantaged individuals must be direct ownership. An applicant or Participant owned principally by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more disadvantaged individuals does not meet this requirement. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a disadvantaged individual where the trust is revocable, and the disadvantaged individual is the grantor, a trustee, and the sole current beneficiary of the trust.
 - b. In the case of a concern which is a partnership, at least 51 percent of every class of partnership interest must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged. The ownership must be reflected in the concern's partnership agreement.
 - c. In the case of a concern which is a limited liability company, at least 51 percent of each class of members interest must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged.
 - d. In the case of a concern which is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged.
5. **"Manufacturer"** means a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies articles, or equipment required under the contract and of the general character described by specifications.
6. **"Regular Dealer"** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. The firm must be an established, regular business that engages in, as its principal business and under its own name, in the purchase and sale or lease of the products 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.
7. **"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 to meet the social and economic disadvantage criteria described below.

a. Evidence of individual social disadvantage must include the following elements:

- 1) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;
- 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 and substantial, not fleeting or insignificant; and
- 4) The individual's social disadvantage must have negatively impacted on his/her entry into or advancement in the business world.
- 5) A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

b. 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 or similar line of business who are not socially disadvantaged.
- 2) Each individual claiming economic disadvantage must submit personal financial information. When married, an individual claiming economic disadvantage must submit separate financial information for his or her spouse, unless the individual and the spouse are legally separated. SBA will consider a spouse's financial situation in determining an individual's access to credit and capital where the spouse has a role in the business (e.g., an officer, employee or director) or has lent money to, provided credit support to, or guaranteed a loan of the business. The SBA does not take into consideration community property laws when determining economic disadvantage.
- 3) Factors to be considered: In considering diminished capital and credit opportunities, SBA will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including income for the past three years (including bonuses and the value of company stock received in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. An individual who exceeds any one of the thresholds set forth in this paragraph for personal income, net worth or total assets will generally be deemed to have access to credit and capital and not economically disadvantaged.

D. DBE BID SUBMISSION REQUIREMENTS

1. The following forms must be submitted no later than the close of business four (4) business days after Bid submittal

a. "Bidders List of Subcontractors (DBE and Non DBE)" -Exhibit 12-B

The U.S. Department of Transportation (DOT) requires SBCTA to maintain a “Bidders List” containing information about all firms (DBE and non-DBE) that bid, propose or quote on SBCTA’s DOT-assisted contracts, in accordance with 49 CFR § 26.11, for use in Omnitrans’ overall annual DBE goal-setting process. Therefore, the bidder shall provide the requested information for every firm who submitted a bid, proposal or quote, including the primary bidder, whether successful or unsuccessful in their attempt to obtain a contract:

- 1) Firm name;
- 2) Firm address;
- 3) Firm’s status as a DBE or non-DBE;
- 4) Age of Firm;
- 5) The annual gross receipts of the firm (<\$500,000; \$500,000 - \$1,000,000; \$1,000,000 - \$2,000,000).

The “Bidders List of Subcontractors (DBE and Non DBE)” information must be submitted on Exhibit 12-B and submitted with the bid.

2. The following form must be submitted by the 15th of each month during the course of the project:
 - a. Summary of Disadvantaged Business Enterprise (DBE) – Subcontractors Paid Monthly Report (Form 315)

Monthly, the prime contractor must complete Form 315 to report all payments made to DBEs. It is important to identify all DBE firms that were paid during the reporting period for the project, including all DBEs listed on the DBE Commitment Form (Exhibit 15G (1)), regardless of tier. The form must be signed and dated by the prime contractor’s representative that is responsible for reporting DBE compliance matters. The form must be submitted no later than the 15th day of each month to SBCTA’s Contract Administrator.

3. The following form must be submitted by the 15th of each month during the course of the project:

- a. Summary of Disadvantaged Business Enterprise (DBE) – Subcontractors Paid Monthly Report (Form 315)

Monthly, the prime contractor must complete Form 315 to report all payments made to DBEs. It is important to identify all DBE firms that were paid during the reporting period for the project, including all DBEs listed on the DBE Commitment Form (Exhibit 15G (1)), regardless of tier. The form must be signed and dated by the prime contractor’s representative that is responsible for reporting DBE compliance matters. The form must be submitted no later than the 15th day of each month to SBCTA’s Contract Administrator.

E. DBE CERTIFICATION

SBCTA is participating as a Non-Certifying Member in the California Unified Certification Program (CUCP). SBCTA requires all DBEs listed by bidder for participation to be certified as eligible DBEs at the time of bid submission. Only participation by DBEs certified by the CUCP under the DOT regulations published under 49 CFR Part 26 may be credited towards race-neutral or race-conscious DBE participation. It is the responsibility of the bidder to verify the DBE certification status of all listed DBEs. The CUCP database identifying certified DBE firms can be found at http://www.dot.ca.gov/hq/bep/find_certified.htm

F. DBE ELIGIBILITY AND COMMERCIALLY USEFUL FUNCTION STANDARDS

1. 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.
2. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company.
3. 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.
4. A DBE must perform a commercially useful function in accordance with 49 CFR § 26.55 (i.e., is responsible for the execution of the work of the contract and is carrying out its responsibility by actually performing, managing and supervising the work involved). 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.
5. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 - a. The CUCP website, which can be accessed at http://www.dot.ca.gov/hq/bep/find_certified.htm
 - b. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Business and Economic Opportunity Certification Unit at (916) 324-1700 for assistance.
 - c. In order to identify certified DBEs, you must only use the California Unified Certification Program Database (CUCP). **Certifications from other agencies or organizations will not be accepted.**
 - i. "FRAUDS" and "FRONTS" - Bidders are hereby cautioned against knowingly and willfully using "fronts" or doing business with DBEs in a manner, which could compromise the DBE's continued eligibility and to meet the DBE goal of this

contract. Only legitimate DBEs are eligible to participate in any federally funded contract. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Any indication of fraud, waste, abuse or mismanagement of federal funds should be immediately reported to SBCTA or to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline (800-424-9071).

G. DBE CREDITING PROVISIONS

1. When a DBE is proposed to participate in the contract, either as a prime contractor or subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards DBE participation. If the contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted.
2. 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 DBE participation only if the DBE subcontractor is a certified DBE and actually performs the work with his or her own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's DBE attainment.
3. Materials or supplies purchased from DBEs count toward DBE credit, and if a DBE is also a DBE, purchases will count toward the DBE goal under the following conditions:
 - a. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies counts towards the goal. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises that materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
 - c. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specification and required under the Agreement are bought, kept in bulk items as petroleum products, steel, cement, gravel, stone or in this section.
 - d. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution shall be by a long-term lease agreement and not an ad hoc or agreement-by-agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

- e. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies required or fees or transportation charges for the delivery of materials or supplies on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
4. For DBE trucking companies: credit for DBEs will count towards DBE credit, under the following conditions:
- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular agreement, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
 - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the agreement.
 - c. The DBE receives credit for the total value of the transportation services it provides on the agreement using trucks it owns, insures, and operates, using drivers it employs.
 - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. A DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration.
 - f. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services. Leased trucks must display the name and identification number of the DBE.

INSTRUCTIONS
EXHIBIT 12-B BIDDER'S LIST OF SUBCONTRACTORS (DBE AND NON-DBE) PART I
AND PART II (CONSTRUCTION CONTRACTS)

ALL BIDDERS:

The U.S. Department of Transportation (DOT) requires SBCTA to maintain a "Bidders List" containing information about all firms (DBE and non-DBE) that bid, propose or quote on SBCTA's DOT-assisted contracts, in accordance with 49CFR § 26.11, for use in SBCTA's overall annual DBE goal-setting process. Therefore, the bidder shall provide the requested information for every firm who submitted a quote, bid, or proposal, including the primary bidder, whether successful or unsuccessful in their attempt to obtain a contract:

- a. Firm name;
- b. Firm address;
- c. Firm's status as a DBE or non-DBE;
- d. Age of Firm;
- e. The annual gross receipts of the firm (<\$500,000; \$500,000-\$1,000,000; \$1,000,000-\$2,000,000).

PART I - Identifies all subcontractors (DBE and Non-DBE) that provided a quote, bid, or proposal.

PART II - Identifies all subcontractors (DBE and Non-DBE) that provided a quote, bid, or proposal but were not selected to participate as a subcontractor on the project.

It is the bidder's responsibility to verify that the DBE(s) falls into one of the following groups in order to count towards the DBE contract goal: 1) Black American; 2) Asian-Pacific American; 3) Hispanic American; 4) Subcontinent Asian American; 5) Native American; and 6) Women.

EXHIBIT 12-B BIDDER'S LIST OF SUBCONTRACTORS (DBE AND NON-DBE)

PART I

The bidder shall list all subcontractors (both DBE and non-DBE) in accordance with Section 2-1.05.4 of the Standard Specifications and per Title 49, Section 26.11 of the Code of Federal Regulations. This listing is required in addition to listing DBE Subcontractors elsewhere in the proposal. **Photocopy this form for additional firms.**

Firm Name/ Address/ City, State, ZIP	Phone/ Fax	Annual Gross Receipts	Description of Portion of Work to be Performed	Local Agency Use Only (Certified DBE?)
Name	Phone	<input type="checkbox"/> <\$1 million		<input type="checkbox"/> YES
Address		<input type="checkbox"/> <\$5 million		<input type="checkbox"/> NO
City, State, ZIP	Fax	<input type="checkbox"/> <\$10 million		If YES list DBE #:
		<input type="checkbox"/> <\$15 million		Age of Firm (Yrs.)
		<input type="checkbox"/> >\$15 million		
Name	Phone	<input type="checkbox"/> <\$1 million		<input type="checkbox"/> YES
Address		<input type="checkbox"/> <\$5 million		<input type="checkbox"/> NO
City, State, ZIP	Fax	<input type="checkbox"/> <\$10 million		If YES list DBE #:
		<input type="checkbox"/> <\$15 million		Age of Firm (Yrs.)
		<input type="checkbox"/> >\$15 million		
Name	Phone	<input type="checkbox"/> <\$1 million		<input type="checkbox"/> YES
Address		<input type="checkbox"/> <\$5 million		<input type="checkbox"/> NO
City, State, ZIP	Fax	<input type="checkbox"/> <\$10 million		If YES list DBE #:
		<input type="checkbox"/> <\$15 million		Age of Firm (Yrs.)
		<input type="checkbox"/> >\$15 million		
Name	Phone	<input type="checkbox"/> <\$1 million		<input type="checkbox"/> YES
Address		<input type="checkbox"/> <\$5 million		<input type="checkbox"/> NO
City, State, ZIP	Fax	<input type="checkbox"/> <\$10 million		If YES list DBE #:
		<input type="checkbox"/> <\$15 million		Age of Firm (Yrs.)
		<input type="checkbox"/> >\$15 million		
Name	Phone	<input type="checkbox"/> <\$1 million		<input type="checkbox"/> YES
Address		<input type="checkbox"/> <\$5 million		<input type="checkbox"/> NO
City, State, ZIP	Fax	<input type="checkbox"/> <\$10 million		If YES list DBE #:
		<input type="checkbox"/> <\$15 million		Age of Firm (Yrs.)
		<input type="checkbox"/> >\$15 million		

Distribution: 1) Original - Local Agency File

DLA-OB 13-06

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EXHIBIT 12-B BIDDER'S LIST OF SUBCONTRACTORS (DBE AND NON-DBE)

PART II

The bidder shall list all subcontractors who provided a quote or bid but were not selected to participate as a subcontractor on this project. This is required for compliance with Title 49, Section 26 of the Code of Federal Regulations. Photocopy this form for additional firms.

Firm Name/ Address/ City, State, ZIP		Phone/ Fax	Annual Gross Receipts	Description of Portion of Work to be Performed	Local Agency Use Only (Certified DBE?)
Name		Phone	<input type="checkbox"/> <\$1 million		<input type="checkbox"/> YES
Address			<input type="checkbox"/> <\$5 million		<input type="checkbox"/> NO
City/State/ZIP		Fax	<input type="checkbox"/> <\$10 million		If YES list DBE #:
			<input type="checkbox"/> <\$15 million		Age of Firm (Yrs.)
			<input type="checkbox"/> >\$15 million		
Name		Phone	<input type="checkbox"/> <\$1 million		<input type="checkbox"/> YES
Address			<input type="checkbox"/> <\$5 million		<input type="checkbox"/> NO
City/State/ZIP		Fax	<input type="checkbox"/> <\$10 million		If YES list DBE #:
			<input type="checkbox"/> <\$15 million		Age of Firm (Yrs.)
			<input type="checkbox"/> >\$15 million		
Name		Phone	<input type="checkbox"/> <\$1 million		<input type="checkbox"/> YES
Address			<input type="checkbox"/> <\$5 million		<input type="checkbox"/> NO
City/State/ZIP		Fax	<input type="checkbox"/> <\$10 million		If YES list DBE #:
			<input type="checkbox"/> <\$15 million		Age of Firm (Yrs.)
			<input type="checkbox"/> >\$15 million		
Name		Phone	<input type="checkbox"/> <\$1 million		<input type="checkbox"/> YES
Address			<input type="checkbox"/> <\$5 million		<input type="checkbox"/> NO
City/State/ZIP		Fax	<input type="checkbox"/> <\$10 million		If YES list DBE #:
			<input type="checkbox"/> <\$15 million		Age of Firm (Yrs.)
			<input type="checkbox"/> >\$15 million		

Distribution: 1) Original - Local Agency File

**INSTRUCTIONS – SUMMARY OF MONTHLY DBE PAYMENTS - FORM NO. 315
(CONSTRUCTION CONTRACTS) (Revised 1/11)
SUCCESSFUL BIDDER:**

This form requires specific information regarding the Disadvantaged Business Enterprise subcontractors paid on this construction contract.

The form must be completed for all DBEs –paid each monthly period. The form requires that the Reporting Period (month/year) be included. A Report Number should also be completed. This field should include a sequential number with the first form having number “1”. The date prepared should also be included.

IMPORTANT: Identify **all** DBE firms that were paid during the reporting period for the project regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

There is a column for the “Dollars Paid This Month”. Enter the Total amount paid for each DBE firm for the reporting period. Also include the total amount paid to date, which shall include the amount paid for the current reporting period.

Include the Schedule Activity ID for construction contracts. Include a brief description for the type of work performed. The original dollar amount committed to the DBE firm should be included in the appropriate Column and any increase or decrease in the subcontract amount resulting from a change order shall be included in the “Dollar +/- resulting from Change order Activity” column.

Form 315 must be signed and dated by the prime contractor’s representative that is responsible for reporting DBE compliance matters. The form must be submitted to SBCTA’s Contract Administrator no later than the 15th day of each month.

San Bernardino County Transportation Authority
Summary of Disadvantaged Business Enterprise (DBE) - Subcontractors Paid Monthly ReportForm 315 1/11

San Bernardino County Transportation Authority
Summary of Disadvantaged Business Enterprise (DBE) - Subcontractors Paid Monthly Report

Reporting Period (Month/Year)	Report Number	Date Prepared
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Subcontractor/Supplier #4							
Name							
Address							
Area Code/Phone							
Contact Person							
Subcontractor/Supplier #5							
Name							
Address							
Area Code/Phone							
Contact Person							
Subcontractor/Supplier #6							
Name							
Address							
Area Code/Phone							
Contact Person							

The Prime shall make prompt payment of all monies due and owed to DBE and non-DBE firms within 10 business days upon receipt of payment from San Bernardino Associated Governments (SBCTA) as per Contract Agreement. Payment of retention shall be made to all DBE and non-DBE subcontractors within 10 days after satisfactory completion of the subcontracted work.

This form is due to SBCTA by the 15th of each month and should reflect all payments made to subs through the last day of the previous month.

The Prime must report monthly, even if the sub(s) did not perform any work for the previous month. Please forward signed original documents by email and/or fax.

Always mail the original each month to: SBCTA, 1170 W. Third Street, 2nd Floor, San Bernardino, CA 92410, ATTN: Contract Compliance Officer

Completed By:	
Name	Signature Date

San Bernardino County Transportation Authority
Summary of Disadvantaged Business Enterprise (DBE) - Subcontractors Paid Monthly Report

Reporting Period (Month/Year)	Report Number	Date Prepared
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Invoice Payment History

[illegible]



**Instructions – Summary of Monthly DBE Payments Information
SBCTA Form 315 (Construction Contracts)**

SUCCESSFUL BIDDER:

This form requires specific information regarding the disadvantaged business enterprise subcontractors paid on this construction contract.

The form must be completed for all DBEs – including all UDBEs paid for each monthly period. The form requires that the Reporting Period (month/year) be included. A Report Number should also be completed. This field should include a sequential number with the first form having number "1". The date prepared should also be included.

IMPORTANT: Identify **all** DBE firms that were paid during the reporting period for the project – including all UDBEs listed on the UDBE Commitment form (Exhibit 15G(1)), regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

There is a column for the "Dollars Paid This Month". Enter the Total amount paid for each DBE firm for the reporting period. Also include the total amount paid to date, which shall include the amount paid for the current reporting period.

Include the Schedule Activity ID for construction contracts. Include a brief description for the type of work performed. The original dollar amount committed to the DBE firm should be included in the appropriate Column and any increase or decrease in the subcontract amount resulting from a change order shall be included in the "Dollar +/- resulting from Change Order Activity" column.

SBCTA Form 315 must be signed and dated by the prime contractor's representative that is responsible for reporting DBE compliance matters. The form must be submitted no later than the 15th day of each month.

ATTACHMENT C - FEDERAL TRANSIT ADMINISTRATION REGULATORY REQUIREMENTS

REGULATORY REQUIREMENTS

RR-01

ADMINISTRATIVE CODE

A. Applicability

This Provision applies to all contracts.

B. Compliance with §§1090 et. seq. and §§87100 et. seq. of the California Government Code

Contractor shall comply with all applicable provisions of §§ 1090 et seq. and §§87100 et seq. of the California Government Code. Without reducing or affecting its obligation to comply with any and all of said provisions, Contractor specifically covenants:

1. Contractor shall not cause or permit any member, officer, or employee of SBCTA to have any financial interest in the Contract;
2. Contractor shall not enter into any Subcontract involving services or property with a person or business prohibited from transacting such business with SBCTA;
3. Contractor warrants and represents that to its knowledge no Board member, officer, or employee of SBCTA has any interest, whether contractual, non-contractual, financial or otherwise, in this Contract or in the business or any other contract or transaction of the Contractor or any Subcontractor, and that if any such interest comes to Contractor's knowledge at any time, Contractor shall make a full and complete disclosure of all such information in writing to SBCTA.

C. Campaign Contributions

Neither Contractor nor its Agents shall give or offer to give any campaign contribution to any member of the SBCTA Board of Directors in violation of the California Government Code §§84300 et seq. Contractor shall submit a Certification of Campaign Contributions with all COs of two hundred thousand dollars (\$200,000) or more.

RR-02

DISCRIMINATION

A. Applicability

This Provision applies to all contracts.

B. In connection with the performance of Work provided for under this Contract, Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military or veteran status, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

RR-03

WHISTLEBLOWER REQUIREMENTS

A. Applicability

This Provision applies to all contracts.

- B. Contractor shall not adopt any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee believes the information discloses violation or noncompliance with a state or Federal regulation; nor shall Contractor retaliate against an employee for taking such actions as set forth in the California Labor Code §1101 et seq.

RR-04

PUBLIC RECORDS ACT

A. Applicability

This Provision applies to all contracts.

- B. Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of SBCTA business, including all information and documents submitted by Contractor ("Records"), shall become the exclusive property of SBCTA and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code § 6250 et seq.). SBCTA's use and disclosure of its records are governed by this Act. SBCTA will use its best efforts to inform the Contractor of any request for any financial records or documents marked "Trade Secret", "Confidential" or "Proprietary" provided by Contractor to SBCTA. SBCTA will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.
- C. In the event of litigation concerning the disclosure of any Records, SBCTA's sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold SBCTA harmless from all costs and expenses including attorney's fees in connection with any such action.

RR-05

ACCESS TO RECORDS

A. Applicability

This Provision applies to all federally funded contracts.

- B. Contractor agrees to provide SBCTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 2 C.F.R. §§ 200.336 and 1201.1, to provide the FTA Administrator or the FTA's authorized representatives, including any FTA Project Management Oversight Contractor, access to Contractor's records and construction sites

pertaining to a major “capital project,” defined at 49 U.S.C. 5302 (3), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

- C. If this Contract is for a “capital project” or improvement (defined at 49 U.S.C. § 5302(3)) and was entered into through other than competitive bidding, the Contractor shall make records related to this Contract available to SBCTA, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- D. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until SBCTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

RR-06

FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES

A. Applicability

This Provision applies to all federally funded contracts.

- B. This Contract includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, and revised March 18, 2013 (including any changes), and 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 Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SBCTA requests which would cause Omnitrans or SBCTA to be in violation of the FTA terms and conditions.

This Contract is funded pursuant to a financial assistance agreement between Omnitrans and the Federal Transit Administration. All applicable FTA laws, regulations, and guidelines apply to this Contract and are incorporated by reference as if fully set forth herein.

- C. Contractor shall comply with all applicable federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between Omnitrans and FTA, as they may be amended or promulgated from time to time during the term of this Contract (collectively “Federal Requirements”). These Federal Requirements may change and the changed Federal Requirements will apply to this Contract as required unless the Federal Government determines otherwise. Contractor's failure to so comply with the Federal Requirements shall constitute a material breach of this Contract.

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Provision applies to all federally funded contracts.

- B. 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 and Conservation Act, as amended, 42 U.S.C. § 6201 et seq.

RR-08

CIVIL RIGHTS REQUIREMENTS

A. Applicability

This Provision applies to all federally funded contracts.

Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d), section 303 of the Age Discrimination in Employment Act of 1975, as amended (42 U.S.C. § 6102), section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132), and Federal transit law at 49 U.S.C. § 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity

- (a) Race, Color, Religion, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, Contractor shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor shall comply with any implementing requirements FTA may issue.
- (b) Age - In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, Contractor shall refrain from discrimination against present and prospective

employees for reason of age. In addition, Contractor shall comply with any implementing requirements FTA may issue.

- (c) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, Contractor shall not discriminate against individuals on the basis of disability. In addition, Contractor shall comply with any implementing requirements FTA may issue.
- (d) Contractor shall include these requirements in each subcontract, modified only if necessary to identify parties, as required by Federal regulations.

RR-09

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

A. Applicability

This Provision applies to all federally funded contracts.

- B. Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to SBCTA, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from this Contract.

Contractor shall include this Provision in each Subcontract and shall not modify the Provision, except to identify the Subcontractor who will be subject to its provisions.

RR-10

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Please refer to Contract Article 40

RR-11

SUSPENSION AND DEBARMENT

A. Applicability

This Provision applies to federally funded contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services.

- B. This Contract is a covered transaction for purposes of 2 CFR Part 180, Subpart B. As such, Contractor shall verify that neither the Contractor, its principals, as defined at 2 CFR 180.995, nor affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940 and 180.935.

Contractor shall comply with 2 CFR Part 180, Subpart C, and shall include the requirement to comply with 2 CFR Part 180, Subpart C in any lower tier covered transaction it enters into.

- C. By entering into this Contract, Contractor certifies that it shall comply with the requirements of 2 CFR Part 180, Subpart C throughout the period of this Contract. This certification is a material representation of fact relied upon by SBCTA. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to SBCTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

RR-12

RECYCLED PRODUCTS

A. Applicability

This Provision applies to all procurement actions involving items designated by EPA in 40 CFR part 247, where the procuring agency purchases \$10,000 or more worth of one of these items during the course of a fiscal year, or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was \$10,000 or more.

- B. The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guidelines for Products Containing Recovered Materials,” 40 CFR Part 247.

RR-13

CLEAN WATER AND CLEAN AIR REQUIREMENTS

A. Applicability

This Provision applies to all federally funded contracts over \$150,000.

B. 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., and all applicable clean water standards of the State of California and any state or local agency having jurisdiction. Contractor shall report each violation to SBCTA. SBCTA will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office, and all other agencies having jurisdiction.

Contractor agrees: It will not use any violating facilities; it will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities”; it will report violations of use of prohibited facilities to FTA; and it will comply with the inspection and other requirements of the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671q, and the Federal Water Pollution Contract Act, as amended, 33 U.S.C §§ 1251-1387.

C. 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. and all applicable Clean Air Standards of the State of California or any state or local agency having jurisdiction. Contractor shall report each violation to SBCTA. SBCTA

will, in turn, report each violation as required to FTA, the appropriate EPA Regional Office and all other agencies having jurisdiction.

Contractor agrees: It will not use any violating facilities; it will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities"; it will report violations of use of prohibited facilities to FTA; and it will comply with the inspection and other requirements of the Clean Air Act, as amended, 42 U.S.C §§ 7401-7671q, and the Federal Water Pollution Contract Act, as amended, 33 U.S.C. §§ 1251-1387.

- D. Contractor shall include this Provision in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

RR-14

COMPLIANCE WITH FEDERAL LOBBYING POLICY

A. Applicability

The following Provision applies to federally funded contracts over \$100,000.

- B. The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, requires that Contractors who apply or bid for an award of a contract of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying," attached hereto as the certification entitled, "Non-Lobbying Certification for Federal-Aid Contracts." As set forth in the certifications, each tier of subcontractors shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence 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 obtaining any Federal Contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 (2 U.S.C. § 1601 et seq.) who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures shall be forwarded from tier to tier up to SBCTA.

RR-15

BUY AMERICA

A. Applicability

The following Provision applies to federally funded contracts that involve the purchase of more than \$150,000 of steel, iron, manufactured goods or rolling stock to be used in an FTA-assisted project.

- B. Contractor shall comply with 49 U.S.C. § 5323(j), the Build America, Buy America Act, Public Law 117-58, div. G §§ 70901-27 ("BABA"), guidance in OMB Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure at <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>.; Notice that the Build America, Buy America Requirement for Construction Materials Applies Effective November 10, 2022, and Notice of Proposed Waiver of that Requirement for a Narrow Category of Contracts and Solicitations, 87 FR 68572 and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless all steel, iron, manufactured products, and construction materials used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general

waiver. General waivers are listed in 49 C.F.R. § 661.7.

- C. SBCTA may investigate Contractor's, any Subcontractor's, and any Supplier's compliance with this Provision. If an investigation is initiated, Contractor, Subcontractor, or Supplier shall document its compliance, in accordance with 49 C.F.R. § 661.15, and cooperate with the investigation. Contractor shall incorporate the Buy America conditions set forth in this Provision in every subcontract or purchase order and shall enforce such conditions.
- D. FTA requires a Buy America certification to be submitted with the proposal, or the proposal shall be considered non-responsive.

RR-16

CARGO PREFERENCE

A. Applicability

The following Provision applies to federally funded contracts involving equipment, materials, or commodities which may be transported by ocean vessels

B. USE OF UNITED STATES FLAG VESSELS

Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

Contractor shall furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to SBCTA (through Contractor in the case of a subcontractor's bill-of-lading.)

Contractor shall include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

RR-17

FLY AMERICA

A. Applicability

This Provision applies to federally funded contracts if the contract or subcontracts may involve the international transportation of goods, equipment, or personnel by air.

B. Definitions. As used in this Provision:

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- C. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- D. If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- E. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403 [*State reasons*]:

(End of Statement)

- F. The Contractor shall include the substance of this Provision, including this paragraph F., in each subcontract or purchase under this Contract that may involve international air transportation.

RR-18

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- A. Applicability

This Provision applies to federally funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

- B. The Contractor shall insert in any subcontracts this Provision in its entirety, and also a clause requiring the subcontractors to include this Provision in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$ 26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. Withholding for unpaid wages and liquidated damages. SBCTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

RR-19

DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 C.F.R. Part 26

- A. This Contract is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. Omnitrans, the direct recipient of funds, has an overall agency DBE goal of 2.9%. The race neutral project goal for the West Valley Connector is 8.5%.
- B. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as SBCTA deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying Contractor from future bidding as non-responsible.

49 CFR § 26.13(b).

- C. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- D. The successful bidder will be required to report its DBE participation obtained through race- neutral means throughout the period of performance.
- E. Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 7 days after the contractor's receipt of payment for that work from SBCTA. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to his contract is satisfactorily completed.
- F. Contractor must promptly notify SBCTA whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of SBCTA (See 49 CFR 26.53(f)(1)(i)).

RR-20

ADA ACCESS

A. Applicability

This Provision applies to federally funded Architect & Engineer, Operations/Management, Rolling Stock Purchase, and Construction contracts.

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

1. 49 U.S.C. § 5301(b)(6), which states the Federal policy of continued support for the delivery of high quality public transportation to all users, including those with disabilities and seniors;
2. All applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disabilities;
3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;

4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
5. All applicable requirements of the following regulations and any subsequent amendments thereto:
 - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
 - (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 27;
 - (3) U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
 - (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
 - (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
 - (6) Federal Management Regulation System Architectural Barriers Act regulations, 41 C.F.R. Subpart 102-76;
 - (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
 - (8) Intentionally Omitted; and
 - (9) Intentionally Omitted; and
 - (10) Intentionally Omitted; and
 - (11) Any implementing requirements FTA may issue.

RR-21

ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM

See Contract Article 48.

RR-22

TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS

Intentionally Omitted.

RR-23

BONDING REQUIREMENTS (PRIME ONLY)

Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$150,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- A. A bid guarantee from each bidder equivalent to ten (10) percent of the bid price. The "bid guarantee" shall consist of a firm commitment and may be in any of the following forms: (a) cashier's check payable to SBCTA; (b) a certified check payable to SBCTA; or (c) a bidder's bond executed by an admitted surety insurer, such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- C. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.

RR-24

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

The Davis-Bacon Act is codified at 40 U.S.C. §§ 3141-3144, 3146, and 3147; FTA's Davis-Bacon Related Act is codified at 49 U.S.C. § 5333(a). The Copeland "Anti-Kickback" Act is codified at 18 U.S.C. § 874 and 40 U.S.C. § 3145. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 U.S.C. § 3145(a), 29 CFR 5.2(h). The Acts apply to any construction contract over \$2,000. 40 U.S.C. § 3142(a); 29 CFR 5.5(a). "Construction," for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 C.F.R. 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum** wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in [29 C.F.R.] § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis- Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30- day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding** - SBCTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, SBCTA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to SBCTA for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. 5.5(a) (3) (i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to

SBCTA for transmission to the Federal Transit Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to SBCTA.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 C.F.R. part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to

journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 C.F.R. part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions

require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

RR-25

PRIVACY ACT - 5 U.S.C. § 552a

Intentionally Omitted

RR-26

TERMINATION 2 CFR § 200.339; 2 CFR part 200, Appendix II (B); FTA Circular 4220.1F

Please refer to Contract Article 15.

RR-27

SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq.; 49 CFR Part 41

A. Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

B. Flow Down

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

C. Seismic Safety

Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

RR-28

BREACHES AND DISPUTE RESOLUTION

Intentionally Omitted

RR-29

VETERANS PREFERENCE (49 U.S.C. § 5325(k))

Veterans Employment. Contractors working on a capital project funded using FTA assistance shall give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C. § 2108) who have the requisite skills and abilities to perform the construction work required under the contract. This Provision shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

RR-30

SAFE OPERATION OF MOTOR VEHICLES

(23 U.S.C. part 402; EO No. 13043; EO No. 13513; U.S. DOT Order No 3902.10)

Seat Belt Use

Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by Contractor or SBCTA.

Distracted Driving

Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

Flow Down Requirements

This Provision must be included in all subcontracts of every tier.

END OF REGULATORY REQUIREMENTS

ATTACHMENT D - SSI DOCUMENT RELEASE FORM



SSI Document Release Form

I attest that I am familiar with and will comply with the standards for access, dissemination, handling, safeguarding, and destruction of SSI information as cited in this Procedure and in accordance with 49 C.F.R. Parts 15 and 1520, " Protection of Sensitive Security Information."

I understand and agree to the following terms and conditions of my access to the information indicated above:

1. I hereby acknowledge that I have read the procedure concerning the nature and protection of information to which I have been provided conditional access, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.
2. By being granted conditional access to the information indicated above, SBCTA has placed special confidence and trust in me and I am obligated to protect this information from unauthorized disclosure, in accordance with the terms of this release and the regulations applicable to SSI to which I am granted access.
3. I attest that I understand my responsibilities and that I am familiar with and will comply with the standards for protecting such information that I may have access to in accordance with the terms of this release and the regulations applicable to SSI to which I am granted access. I understand that SBCTA may conduct inspections at any time or place for the purpose of ensuring compliance with the conditions for access, dissemination, handling and safeguarding information under this release.
4. I will not disclose or release any information provided to me pursuant to this Agreement without proper authority or authorization. Should situations arise that warrant the disclosure or release of such information, I will do so only under approved circumstances and in accordance with the regulations applicable to SSI. I will honor and comply with any and all dissemination restrictions cited or verbally relayed to me by the proper authority.
5. I hereby agree that material which I have in my possession and containing information covered by this release, will be handled and safeguarded in a manner that affords sufficient protection to prevent the unauthorized disclosure of or inadvertent access to such information, consistent with the regulations applicable SSI. I agree that I shall return all information to which I have had access or which is in my possession 1) upon demand by an authorized individual; and/ or 2) upon the

conclusion of my duties, association, or support to SBCTA; and/ or 3) upon the determination that my official duties do not require further access to such information.

6. I hereby agree that I will not alter or remove markings which indicate SSI and require specific handling instructions from any material I may come in contact with. I agree that if I use information from a sensitive document or other medium, I will carry forward any markings or other required restrictions to derivative products, and will protect them in the same matter as the original.
7. I hereby agree that I shall promptly report to the appropriate official, in accordance with the guidance issued for SSI, any loss, theft, misuse, misplacement, unauthorized disclosure, or other security violation, I have knowledge of and whether or not I am personally involved. I also understand that my anonymity will be kept to the extent possible when reporting security violations.
8. If I violate the terms and conditions of this release, such violation may result in the cancellation of my conditional access to the SSI covered by this release. This may serve as a basis for denying me future access to SSI. I understand that if I violate the terms and conditions of this release, I could be subjected to administrative, disciplinary, civil, or criminal action, as appropriate, under the laws and regulations applicable to SSI.

Printed Name

Company

Signature

Phone Number

Date

ATTACHMENT E - SPECIAL PROVISIONS

SPECIAL PROVISIONS (CONSTRUCTION)

SP-01 PERCENTAGE OF WORK PERFORMED BY THE CONTRACTOR

The Contractor shall perform with its own organization Work amounting to at least thirty (30) percent of the Total Contract Price.

SP-02 PERMIT RETENTION

Contractor shall be responsible for obtaining necessary permits from the Authorities Having Jurisdiction (AHJ) such as construction permit utilities, traffic, and other permits necessary to execute the work and keep all the permits current throughout the duration of the project.

SP-03 IDENTIFICATION OF CONSULTANTS

A Construction Management firm will provide support services on this Project, as part of an integrated Project Management team with SBCTA. The firm and individual will be identified in the Notice to Proceed.

SP-04 PAYMENT OF PREVAILING WAGES

In addition to the requirements for payment, the Contract is also subject to payment of prevailing wages as determined by the United States Department of Labor pursuant to the federal Davis-Bacon Act. In the event of a conflict between the prevailing wage as determined by the State of California and the prevailing wage as determined by the United States Department of Labor, the Contractor shall pay at least the higher of the two wages.

SP-05 CONTRACT DOCUMENTS TO BE FURNISHED BY SBCTA

SBCTA will provide the following documents to the Contractor. The Contractor shall be responsible for supplying all Subcontractors and/or themselves with additional copies of documents at their own expense.

DOCUMENTS	QUANTITY
Conformed Contract	1
Conformed Plans (Drawing) Set	1
Conformed Technical Specifications Set	1

SP-06 LIQUIDATED DAMAGES

Please see Contract Article 30.

SP-07 WEEKLY STATEMENT OF WORKING DAYS (WSWD)

A Working Day is defined as any 24-hour consecutive period except Saturday and legal holidays recognized by SBCTA, or any day when Contractor cannot perform work on the controlling activity for at least 50% of the day with at least 50% of the normal labor and equipment due to any of the following:

- Adverse weather related conditions that causes contractor to dismiss the crew.

- Maintaining traffic under the Contract
- Resident Engineer's direction to suspend the controlling activities for reasons unrelated to the Contractor's performance
- Unanticipated event not caused by either party such as:
 - Act of God
 - Act of public enemy
 - Epidemic
 - Fire
 - Flood
 - Government declared State of Emergency

A weekly statement of working days (WSWD) will be maintained by the Resident Engineer and verified by the contractor. WSWD form is to be duly filled up every week and used as a tool to keep track of the scheduled period of performance for the contract. This will also be used to calculate the number of days for liquidated damages on the project.

Determination that a day is a non-working day by reason of inclement weather or conditions resulting immediately therefrom shall be made by the Engineer. The Contractor will be allowed fifteen days from the issuance of the weekly statement of working days in which to file a written protest setting forth in what respects the Contractor disagreed with the Engineer; otherwise, the decision of the Engineer shall be deemed to have been accepted by the Contractor as correct. The Engineer will furnish the Contractor a weekly statement showing the number of working days charged to the Construction Project for the preceding week, the number of working days of time extensions being considered or approved, the number of working days originally specified for the completion of the Construction Project and the number of working days remaining to complete the Construction Project and the extended date for completion thereof, except when working days are not being charged in conformance with the provisions in Article 15 of the Contract Agreement "Stop Work Order".

SP-08 LIMITATION ON THE USE OF HEAVY EQUIPMENT

Intentionally Omitted

SP-09 COOPERATIVE AGREEMENTS

Contractor shall comply with the terms of the third-party agreements executed by SBCTA as set forth in SP-30.

SP-10 VARIATION IN ESTIMATED QUANTITY

Intentionally Omitted.

SP-11 PAYMENT

Application for payment will be as indicated in Technical Specifications Section 01 20 10, Section 3.4.

Each application for payment shall be consistent with previous applications and payments, as approved by SBCTA and paid by SBCTA. The Initial application for payment, the application for payment at time of Substantial Completion, and the final application for payment involve additional requirements.

Payment Application Times: The period covered by each application for payment is one month, ending on the last day of the month. Progress payments for the prior monthly period shall be submitted to SBCTA within 14 days of the first of the following month.

Application for payment Forms: The Contractor will submit applications for payment on forms acceptable to SBCTA. The Contractor shall submit forms for approval before starting work.

Application Preparation: Complete every entry on the form. Have the form executed by a person authorized to sign legal documents on behalf of the Contractor. SBCTA will return incomplete applications without action.

1. Entries shall match data on the Schedule of Values and the Contractor's construction schedule. Use updated schedules if revisions were made.
2. Include the percentage for Work completed since the previous Application for Payment, whether or not payment has been received on the prior request. Include amounts for work performed under executed Change Orders issued during the construction period covered by the application.
3. Certified payrolls shall be submitted to SBCTA as part of each application for payment.
4. Contractor shall submit final signed and approved applications for progress payments to SBCTA on the due date every month.

At the sole discretion of SBCTA, application for payment amounts may include materials or equipment purchased or fabricated and stored, but not yet installed. Payments may be made, if approved in advance by SBCTA in writing, for materials stored off-site pursuant to the following conditions:

- a. When approved by SBCTA in accordance with other Specification requirements, a maximum of 80 percent of the value of material will be paid for material stored off-site for off-site fabrication or finishing. Materials shall be stored at a bonded facility, and shall be adequately insured and protected against theft and exposure or loss. Materials shall not be susceptible to deterioration or physical damage in storage or in transit to the site. Payments shall not be made for materials in transit to the site or to the storage site.
- b. Provide a certificate of insurance, evidence of transfer of title to SBCTA, and surety's consent to payment for stored materials. Provide supporting documentation that verifies the amount requested, such as paid invoices. Match the amount requested with amounts indicated on documentation; do not include overhead and profit on stored materials.
- c. Provide summary documentation for stored materials, indicating the following:
 1. Materials previously stored and included in previous applications for payment.
 2. Work completed for this Application utilizing previously stored materials.
 3. Additional materials stored with this application.
 4. Total materials remaining stored, including materials with this application.

A. PROMPT PAYMENT TO SUBCONTRACTORS

Prior to SBCTA's issuance of progress payments, commencing with the second invoice, the Contractor shall provide SBCTA with evidence of Prompt Payment to Subcontractors for all amounts due for satisfactory work performed. Failure of Contractor to make prompt payment as defined in this Section or to delay payment without prior written consent of SBCTA shall constitute noncompliance with this Contract, which may result in appropriate administrative sanctions which may include withholding of payment of Contractor's invoice by SBCTA until payment is made to the Subcontractor/Supplier or termination of the Contract in accordance with the Section entitled, Termination of Contract.

B. PAYMENT APPROVAL

SBCTA may elect not to approve payment, and may withhold payment in whole or in part, to the extent reasonably necessary to protect SBCTA if, in SBCTA's opinion, payment in the amount of the application cannot be approved. SBCTA will notify the Contractor in writing of SBCTA's reasons for withholding payment in whole or in part. If the Contractor and SBCTA cannot agree on a revised amount, SBCTA will promptly issue a payment in the amount which SBCTA approves. SBCTA may also decide not to approve payment or, because of subsequently discovered evidence or subsequent observations, may nullify all or part of any payment previously issued, to such extent as may be necessary in SBCTA's opinion to protect SBCTA from loss because of the following:

- a. Defective Work not remedied
- b. Third-party Claims filed, or reasonable evidence indicating probable filing of such Claims
- c. Failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment
- d. Reasonable evidence that Work cannot be completed for the unpaid balance of the Contract Sum
- e. Damage to SBCTA or another contractor
- f. Reasonable evidence that Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay
- g. Persistent failure to carry out Work in accordance with Contract Documents
- h. Any liquidated damages that have accrued as of the date of the Application for Payment
- i. Any sums expended by SBCTA in performing any of the Contractor's obligations under the Contract that the Contractor has failed to perform
- j. Any other sums that SBCTA is entitled to recover from the Contractor under the terms of the Contract equity, or the law, including insurance deductibles
 - i. When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.
 - ii. The failure of SBCTA to deduct any of the above- identified sums from a progress payment shall not constitute a waiver of SBCTA's right to such sums.
 - iii. SBCTA shall not have an obligation to pay or to see to payment of money to Subcontractors, except as may otherwise be required by law.
 - iv. A payment, partial payment, or partial or entire use or occupancy of the

Project by SBCTA shall not constitute acceptance of Work not in accordance with Contract Documents.

C. FINAL PAYMENT APPLICATION

1. After SBCTA issues a Certificate of Final Acceptance, Contractor shall submit an application for final payment with releases and supporting documentation not previously submitted and accepted, including, but not limited, to the following:
 - a. Evidence of completion of Project closeout requirements.
 - b. Completion of items specified for completion after Substantial Completion
 - c. Insurance certificates for products and completed operations (where required), and proof that taxes, fees, and similar obligations were paid
 - d. An updated final statement, accounting for final changes to the Contract Sum
 - e. Surety consent to Final Payment
 - f. Evidence that claims have been settled
 - g. Final meter readings for utilities, a measured record of stored fuel, and similar data as of the date of Substantial Completion or when SBCTA took possession of and assumed responsibility for corresponding elements of the Work
 - h. A final liquidated damages settlement statement
 - i. Transmittal of required Project Record documents to SBCTA
 - j. Removal of temporary facilities and services, surplus materials, rubbish, and similar elements
2. The Contractor shall prepare and submit a proposed Application for Final Payment to SBCTA, showing the proposed total amount due the Contractor; any Change Order Work; increased or decreased bond premiums due to Change Order work and other bases for payments; deductions made or to be made for prior payments; amounts to be retained; any Claims the Contractor intends to file at that time, or a statement that no Claims will be filed; and any unsettled Claims, stating the specific amounts. The Application for Final Payment shall be accompanied by complete and legally effective releases or waivers of liens and stop notices arising out of or filed in connection with the Work, in a form satisfactory to SBCTA. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. Claims filed with the Application for Final Payment must be otherwise timely under these Special Provisions. Payments to the Contractor shall be made only for the actual quantities of the Contract items constructed in accordance with the Contract Documents.
3. SBCTA shall review the Contractor's proposed Application for Final Payment. Any recommended changes or corrections shall be forwarded to the Contractor. Within 10 days thereafter the Contractor shall submit its revised Application for Final Payment, incorporating any recommended changes or corrections made by SBCTA. Upon acceptance by SBCTA, the revised Application for Final Payment shall become the basis for final payment.
4. If no Claims have been filed with the Application for Final Payment and no other Claims remain unsettled, and agreements are reached on all questions regarding the Application for Final Payment, SBCTA, in exchange for an executed release that is satisfactory in form and substance to SBCTA, shall pay the entire sum found due on the approved Application for Final Payment, including the amount, if any, allowed on Claims. If all Claims have not been resolved, SBCTA may issue what it reasonably determines to be Final Payment, and Contractor may pursue its claims in conformance with applicable laws.

5. Final payment shall be made within 30 days after SBCTA's approval of the Application for Final Payment. SBCTA may withhold from the final payment any amount authorized by the Contract, at law or equity.
6. Notwithstanding SBCTA's acceptance of the Application for Final Payment and irrespective of whether it is before or after final payment has been made, SBCTA shall not be precluded from subsequently showing that (1) the true and correct amount or type of Work performed or equipment and materials furnished is/are different from that previously accepted, (2) the previously accepted Work or materials did not in fact conform to the Contract requirements, or (3) a previous payment or portion thereof for Work performed or materials furnished was improperly made. SBCTA also shall not be stopped from demanding and recovering damages from the Contractor as appropriate, under any of the foregoing circumstances as permitted under the Contract, at law or equity.

D. FINAL PAYMENT AS RELEASE

The release provided by the Contractor shall be from any and all Claims arising from the Work under and in connection with the Contract, and shall release and waive any Claims against SBCTA, the Engineering Services Consultant, the Construction Manager Consultant, and their respective agents, officers, directors, members, and employees. The release shall be accompanied by a certification by the Contractor that (1) it has resolved any Claims made by Subcontractors, Suppliers, and others against the Contractor or the Project; (2) it has no reason to believe that any party has a valid Claim against the Contractor or the Project which has not been communicated in writing by the Contractor to SBCTA; and (3) all warranties and guarantees are in full force and effect.

E. PAYMENT OF TAXES

The Contractor shall pay all taxes and duties applicable to and assessable against any Work, materials, services, processes, and operations incidental to or involved in the Contract, including but not limited to retail sales and use, transportation, export, import, business, and special taxes. The Contractor is responsible for ascertaining and acquainting itself with such taxes and making all necessary arrangements for payment. The prices established in the Contract Amount and Schedule of Values may include compensation for any taxes the Contractor is required to pay by laws and regulations in effect on the date the Bid was opened. The Contractor will maintain auditable records, subject to SBCTA reviews, confirming that tax payments are current at all times.

F. RETENTION ON PROGRESS PAYMENTS

SBCTA shall retain from each progress payment five percent (5%) of the progress payment as part security for the fulfillment of the Contract by the Contractor. However, after fifty percent (50%) of the Work has been completed, if, in the sole discretion of SBCTA, progress on the Work is satisfactory, SBCTA will not make further deductions on the remaining progress payments, except that the amount of the retention withheld shall not at any time thereafter be less than five percent (5%) of the Contract Price, as amended, or as adjusted by Change Orders. However, if SBCTA determines that the Work or progress of the Work is unsatisfactory, SBCTA may reinstate, continue or increase retentions in amounts necessary to increase the total retention to an amount not to exceed ten percent (10%) of the Contract Price.

1. Should the Contractor retain partial payment of Subcontractor's/Supplier's invoices for any reason allowable under the terms of this Contract and the Contractor's written agreement with the Subcontractor

or Supplier, the Contractor agrees to make payment of such retainage within 10 working days of satisfactory completion of the work or other obligation.

2. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with SBCTA, or with a state or federally chartered bank in California as the escrow agent, which shall then pay those monies to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.
3. Alternatively, the Contractor may request and SBCTA shall make payment of retentions earned directly to the escrow agent at the expense of the Contractor. At the expense of the Contractor, the Contractor may direct the investment of the payments into securities, and the Contractor shall receive the interest earned on the investments under the same terms provided for in this section for securities deposited by the Contractor. Upon satisfactory completion of the Contract, the Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from SBCTA, pursuant to the terms of this Section. The escrow contract used pursuant to this Section shall be substantially similar to the form set forth in the California Public Contract Code.
4. Securities eligible for investment under this Section shall include those listed in the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and SBCTA.

G. STOP NOTICES

1. SBCTA will retain and withhold from payment to the Contractor sufficient sums to cover stop notices filed pursuant to Section 9350 et seq. of the California Civil Code, including an amount to provide for the reasonable cost of any litigation thereunder.
2. In addition to other amounts properly withheld under this Section or under other provisions of the Contract, SBCTA shall retain from Progress Payments otherwise due the Contractor an amount equal to 125% of the amount claimed under any Stop Notice under Civil Code §§ 3179 et seq. or other lien filed against the Contractor for labor, materials, supplies, equipment, and any other thing of value claimed to have been furnished to and/or incorporated into the Work, or for any other alleged contribution thereto. In addition to the foregoing and in accordance with Civil Code § 9358, SBCTA may also satisfy its duty to withhold funds for Stop Notices by refusing to release funds held in escrow pursuant to Public Contract Code §22300. However, SBCTA may release such funds upon receipt of a Release of Stop Notice executed by a Stop Notice Claimant, a Stop Notice Bond, an order of a court of competent jurisdiction, or other evidence satisfactory to SBCTA that the Contractor has resolved such claim by settlement.

SP-12 CHANGES

A. SBCTA Directed Changes

1. SBCTA may at any time order additions, deletions, or revisions (Changes) in the Work within the general scope of the Contract. These will be initiated by a Change Notice (CN) and authorized only upon the issuance of a written Change Order (CO) or, in unusual circumstances, by the issuance of a Work Authorization Change Notice (WACN). Upon receipt of any Change Order or WACN, the Contractor shall promptly proceed with the Work.

2. Except as expressly permitted herein, no order, statement, or conduct of SBCTA or anyone purporting to represent SBCTA shall be treated as a Change under the Contract or entitle the Contractor to an adjustment of compensation or time of performance under the Contract. The Contractor may request the initiation of a Change by a Request for Change (RFC). Regardless of how a Change is initiated or authorized, any compensation in money or time for a Change can only be authorized by a written Change Order or WACN. The Contractor's records pertaining to Changes pursuant to this Section are subject to audit.
3. Changes in the Work within the general scope of the Contract may include, but are not limited to, material Changes resulting from any of the following:
 - a. Specifications, drawings, and designs
 - b. Method, manner, or timing of the performance of Work
 - c. SBCTA furnished facilities, equipment, materials, services, or Worksite
 - d. Contract milestones
 - e. Value engineering
 - f. Adding, deleting, or revising Work
4. The Change Notice: A Change Notice does not authorize a Contractor to commence performance of the changed Work. Nothing in the Contract will be construed to bind SBCTA for acts of its employees and agents that exceed the delegation of authority specified in the Notice to Proceed. The Contractor shall promptly notify SBCTA in writing when it receives direction, instruction, interpretation, or determination from any source that may lead to or cause any Change in the Work. Such written notification shall be given to SBCTA before the Contractor acts on said direction, instruction, interpretation or determination.
5. Work Authorization Change Notice (WACN):
 - a. The WACN issued by SBCTA shall expressly specify:
 - i. The intention to treat such items as Changes in the Work;
 - ii. The kind, character, and limits of the Changes in Work as far as can be ascertained by SBCTA; and
 - iii. The terms under which changes to the Total Contract Amount will be determined.
 - iv. Payment provisions
 - b. The WACN shall be executed by SBCTA and transmitted to the Contractor before any Work is started on the items covered thereby. The WACN shall contain a cost limitation that cannot be exceeded without a prior written additional approval from SBCTA. SBCTA and the Contractor shall negotiate the adjustment to the Contract Amount or time of performance and, thereafter, incorporate such into a subsequently issued Change Order.

6. The Change Order:

- a. The Change Order shall expressly state that the change in compensation, if any, includes all amounts to which the Contractor is entitled as a result of the events giving rise to the Change Order. The execution of a Change Order by both parties shall be deemed final without reservation of rights by either party for all costs and time of performance related to the Change.
- b. For all Change Orders greater than or equal to \$200,000, a certification of conflict of interest may be required from the Contractor and all Subcontractors and Suppliers who will perform Work included in the Change Order.
- d. In the event that the Contractor and SBCTA are unable to agree on the amount of any Change or adjustment to be made for compensation or time, a unilateral Change Order may be issued by SBCTA, in which case the Contractor may challenge the Change Order or any aspect of the Change Order only by strictly following the procedures described in the Special Provisions Section entitled DISPUTES & CLAIMS. If the Contractor challenges the Change Order, the Contractor shall nonetheless proceed diligently and timely with the Work to be performed under the Contract and the Change Order.

B. Contractor Requested Changes

The Contractor may request additional compensation or time through a Request for Change (RFC). In order for an RFC to be considered timely, the Contractor must submit a RFC no later than 10 working days after the Contractor first became aware, or should have become aware, of the event or occurrence giving rise to such request. Untimely requests are subject to denial by SBCTA regardless of the merits of any RFC. The Contractor is not entitled to any compensation or time extension when an RFC is determined by SBCTA to be untimely. The RFC must specify the particulars of such Change, including relevant dates and circumstances.

Any RFC that is approved by SBCTA will be incorporated into a Change Notice. If the RFC is denied but the Contractor believes its request was timely and has merit, the Contractor may challenge the denial only by strictly following the procedure described in the SP-15 entitled DISPUTES & CLAIMS.

SBCTA encourages the Contractor to submit Value Engineering Change Proposals (VECPs) whenever it identifies areas or instances in which improvements can be made, in order to avail SBCTA of potential cost savings. The standards and procedures in Caltrans Standard Specifications (2018) Section 4-1.07 shall apply to any VECP submitted by the Contractor.

C. Contractor's Change Order Proposal

1. If directed by SBCTA, the Contractor shall submit a Contractor's Cost and Schedule Proposal to SBCTA within 10 days after receipt of a Change Notice or WACN. The proposal shall detail price and scheduling information showing all of the cost and time ramifications of the additions, deletions, or modifications shown in the Change Notice or WACN. If any prices or other aspects are conditional, such as orders being made by a certain date or the occurrence of a particular event at a specified time, the Contractor shall identify these conditions in its proposal. The components and allowed costs to be used by the Contractor in preparing the proposal shall be those set forth in this Section and shall be presented in such a manner that all cost and schedule information can be easily identified and certified upon request.

2. If the Contractor does not submit the Contractor's Cost and Schedule Proposal by the required date, SBCTA reserves the right to issue a unilateral Change Order utilizing SBCTA's cost estimate. If SBCTA issues such a unilateral Change Order, SBCTA's cost estimate shall be final and the Contractor shall not be entitled to dispute the amount. In addition, SBCTA reserves the right to withhold payment on a WACN if the requested Contractor's Cost and Schedule Proposal is not submitted by the required date.
3. SBCTA or its Authorized Representatives may require that the Contractor supply appropriate documentation to support the prices proposed for Contract Changes and may refuse to complete negotiations until satisfactory documentation is submitted. Once a Contract Change Order is executed, the Contractor's records shall be subject to audit and inspection.
4. The Contractor shall maintain such records as SBCTA deems sufficient to distinguish the direct cost of Changed Work on a WACN from the cost of other operations. When directed by SBCTA, the Contractor shall submit daily, no later than each subsequent workday, to SBCTA or its designee, reports of Changed Work on forms approved by SBCTA. The reports shall itemize all costs for labor, materials, and equipment, and give the total of costs to date for the Changed Work. For labor, the reports shall include names, hours worked, and rates of pay for all classifications (up to but not including general foreman) that are engaged in the actual direct performance of the Work.
5. When SBCTA determines that the method of payment for a WACN or Contract Change is to be on a time and material basis, the Contractor shall maintain and segregate cost and pricing data, books, records, documents, and any other accounting evidence sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred.
6. All records and reports shall be made immediately available to SBCTA upon request. The cost of preparing such reports shall be included in the Contractor's overhead compensation. All Changed Work reports shall be signed daily by the Contractor or its Authorized Representative, and by SBCTA. SBCTA will compare its records with the Contractor's reports, make any necessary adjustments, and determine the costs of Changed Work. Such reports shall be the basis for final payment of the Change Order.
7. If the Contractor has submitted cost or pricing data in connection with the pricing of any Change to the Contract (unless the pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation), SBCTA and other authorized agencies shall have the right to examine and audit books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing or performing the Change in order to evaluate the accuracy, completeness, and currency of the cost or pricing data.
8. Also subject to audit review by SBCTA or its Authorized representatives shall be the Contractor's Records relating to those items on a progress payment application that relate to (1) Work done under a Work Authorization Change Notice; (2) materials or services not yet incorporated into the Work; and (3) Work done under a Change Order negotiated on a time and Materials, Unit Price, or lump sum basis. If the audit indicates that the Contractor has been overpaid under a previous payment application, that overpayment shall be credited against current progress payment applications.

D. Changed Work Compensation

Contractor shall provide an itemized breakdown of Compensation for changed work as determined using pricing guidelines found in Special Provision 18, "Force Account Payment."

E. Defective Cost and Pricing Data

For a period of three (3) years from the date of final payment under the Contract (and prior to the execution of any Change Order that exceeds \$100,000), SBCTA or its Authorized Representatives, shall have the right to examine all books, records, documents, and any other applicable data that relate to the negotiation or performance of any Change Order for the purpose of evaluating the accuracy and completeness of the cost or pricing data submitted by the Contractor. To the extent that the examination reveals inaccurate, incomplete, or non-current data, the data shall be considered defective; if the audit indicates the Contractor has been overpaid under a previous payment application, such overpayment will be credited against current progress payment applications and the Change Order price shall be adjusted to reflect corrected amount. Exceptions to this requirement are pricing for Change Orders based on Contract unit prices, adequate price competition, established catalog or marked prices for commercial items sold in substantial quantities to the public, or prices set by law or regulation.

The following applies to any Contract modification to the Contract involving aggregate increases or decreases in cost plus applicable mark-up, fee or profits:

1. Contractor Data:

- a. If any price, including profit, negotiated in connection with any Contract modification was increased by more than one hundred thousand dollars (\$100,000) and
 - i. The Contractor supplied certified cost or pricing data that were not complete, accurate, and current; or
 - ii. A Subcontractor or prospective Subcontractor supplied the Contractor certified cost or pricing data that were not complete, accurate, and current;
 - iii. A Supplier or prospective Supplier supplied the Contractor certified cost or pricing data that was not complete, accurate and current; or
 - iv. Any of these parties furnished data of any description that were not accurate, then the price shall be reduced accordingly and the Contract shall be modified to reflect the reduction.
- b. If Subcontractor substitutions are made, any reduction in the Contract Price under this Section due to defective data from a prospective Subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit mark-up, by which the actual subcontract, or the actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- c. The Contractor may be required to certify in substantially the form prescribed in Federal Acquisition Regulations, 48 CFR § 15.406-2 that to the best of its knowledge and belief, the data submitted under this Article is accurate, complete and current as of the date of contract of the negotiated price of the Contract modification.

2. Subcontractor/Supplier Data

- a. Before awarding any Subcontract expected to exceed \$100,000 when entered into, or pricing any subcontract modification involving aggregate increases or decrease in costs, plus applicable profits, expected to exceed \$100,000, the Contractor shall require the Subcontractor to submit cost or pricing data, in writing unless the price is:
 - i. based on adequate competition;
 - ii. based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - iii. set by law or regulation.
- b. The Contractor shall require the Subcontractor to certify in substantially the form prescribed in Subsection § 15.406-2 of the Federal Acquisition Regulations that to the best of its knowledge and belief, the data submitted under this Section were accurate, complete and current as of the date of contract on the negotiated price of the subcontract or subcontract modification.

F. Changed Work Compensation for SBCTA-Caused Delays

If Contractor believes that SBCTA has caused delays to the performance of their Contract scope to which it believes it is entitled to additional compensation, Contractor shall follow the following procedures as shown below:

1. Notice Requirements: If the Contractor or its Subcontractor encounter any issue, event, condition, circumstance or cause of a perceived or actual delay, disruption, interference, hindrance or acceleration to the Work, Contractor must provide a written notice to SBCTA no later than three (3) days after encountering the issue, event, condition, circumstance or cause. The notice shall provide all information relative to the particulars of such Change, including relevant dates, circumstances and key elements. Untimely requests are subject to denial by SBCTA regardless of the merits of any Request for Change. The Contractor is not entitled to any compensation or time extension when a Request for Change is determined by SBCTA to be untimely.
2. Request for Change for SBCTA-caused extensions of the Period of Performance: Within 30 days of Contractor's written notice as described above, Contractor must prepare and submit to SBCTA a Request for Change in accordance with the provisions of this Section. The Change Order Request shall also identify all secondary or residual scopes of Work, if any, that will be impacted by the issue, event, condition, circumstance or cause for which the costs and time impacts could not be provided or estimated. Contractor shall state why and how such scopes of Work will or likely will be impacted and why the Contractor cannot provide actual or estimated costs and time impacts within the content of the Request for Change.
3. Compensation Basis: If SBCTA determines that the Contractor is entitled to compensation for SBCTA-caused delays to the Period of Performance, Contractor will be compensated by SBCTA based on the costs associated with Overhead that are in proportion to the time required to complete the Work and shall not include costs of labor, materials and labor or any other costs directly related to the Work.

G. Increased or Decreased Quantities

Increases or decreases in the quantity of a Contract item of work will be determined by comparing the total pay quantity of that item of work with the Engineer's Estimate therefore.

If the total pay quantity of any item of work required under the Contract varies from the Engineer's Estimate by 25 percent or less, payment will be made for the quantity of work of the item performed at the Contract unit price unless eligible for adjustment pursuant to Subsection K, "Changes in Character of Work."

If the total pay quantity of any item of work required under the Contract varies from the Engineer's Estimate by more than 25 percent, in the absence of an executed Contract Change Order specifying the compensation to be paid, the compensation payable to the Contractor will be determined in accordance with Subsections H, I, or Subsection J, as the case may be.

H. Increases of More Than 25 Percent

Should the total pay quantity of any item of work required under the Contract exceed the Engineer's Estimate therefore by more than 25 percent, the work in excess of 125 percent of the estimate and not covered by an executed Contract Change Order specifying the compensation to be paid therefore will be paid for by adjusting the Contract unit price, as hereinafter provided, or at the option of SBCTA or its designee, payment for the work involved in the excess will be made on the basis of force account as provided in Special Provision 18, "Force Account Payment."

The adjustment of the Contract unit price will be the difference between the Contract unit price and the actual unit cost, which will be determined as hereinafter provided, of the total pay quantity of the item. If the costs applicable to the item of work include fixed costs, the fixed costs will be deemed to have been recovered by the Contractor by the payments made for 125 percent of the Engineer's Estimate of the quantity for the item, and in computing the actual unit cost, the fixed costs will be excluded. Subject to the above provisions, the actual unit cost will be determined by SBCTA or its designee in the same manner as if the work were to be paid for on a force account basis as provided in Special Provision 18, "Force Account Payment" or the adjustment will be as agreed to by the Contractor and SBCTA or its designee.

When the compensation payable for the number of units of an item of work performed in excess of 125 percent of the Engineer's Estimate is less than \$15,000 at the applicable Contract unit price, SBCTA or its designee reserves the right to make no adjustment in the Contract unit price, except that an adjustment will be considered if requested in writing by the Contractor.

I. Decreases of More Than 25 Percent

Should the total pay quantity of any item of work required under the Contract be less than 75 percent of the Engineer's Estimate, an adjustment in compensation pursuant to this Subsection H will not be made unless the Contractor so requests in writing. If the Contractor so requests, the quantity of the item performed, unless covered by an executed Contract Change Order specifying the compensation payable therefore, will be paid for by adjusting the Contract unit price as hereinafter provided, or at the option of SBCTA or its designee, payment for the quantity of the work of the item performed will be made on the basis of force account as provided in Special Provision 18, "Force Account Payment," provided, however, that in no case shall the payment for that work be less than that which would be made at the Contract unit price.

The adjustment of the Contract unit price will be the difference between the Contract unit price and the actual unit cost, which will be determined as hereinafter provided, of the total pay quantity of the item, including fixed costs. The actual unit cost will be determined by SBCTA or its designee in the same manner as if the work were to be paid for on a force account basis as provided in Special Provision 18, "Force Account Payment," or the adjustment will be as agreed to by the Contractor and SBCTA or its designee.

The payment for the total pay quantity of the item of work will in no case exceed the payment which would be made for the performance of 75 percent of the Engineer's Estimate of the quantity for the item at the original Contract unit price.

J. Eliminated Items

Should any Contract item of the work be eliminated in its entirety, the total dollar amount will be deducted from the Contract, and payment will be made to the Contractor only for actual costs incurred in connection with the eliminated Contract item if incurred prior to the date of notification in writing by SBCTA or its designee of the elimination.

If acceptable material is ordered by the Contractor for the eliminated item prior to the date of notification of the elimination by SBCTA or its designee, and if orders for that material cannot be canceled, the material will be paid for at the actual cost to the Contractor. In this case, the material paid for shall become the property of SBCTA, and SBCTA shall pay the actual cost of any further handling. If the material is returnable to the vendor and if SBCTA or its designee so directs, the material shall be returned, and the Contractor will be paid for the actual cost of charges made by the vendor for returning the material.

The actual costs or charges to be paid by SBCTA to the Contractor as provided in this Subsection J will be computed in the same manner as if the work were to be paid for on a force account basis as provided in Special Provision 18, "Force Account Payment."

K. Changes in Character of Work

If an ordered change in the plans or specifications materially changes the character of the work of a Contract item from that on which the Contractor based the Bid price, and if the change increases or decreases the actual unit cost of the changed item as compared to the actual or estimated actual unit cost of performing the work of that item in accordance with the plans and specifications originally applicable thereto, in the absence of an executed Contract Change Order specifying the compensation payable, an adjustment in compensation will be made in accordance with the following.

The basis of the adjustment in compensation will be the difference between the actual unit cost to perform the work of that item or portion thereof involved in the change as originally planned and the actual unit cost of performing the work of the item or portion thereof involved in the change, as changed. Actual unit costs will be determined by SBCTA or its designee in the same manner as if the work were to be paid for on a force account basis as provided in Special Provision 18, "Force Account Payment" or the adjustment will be as agreed to by the Contractor and SBCTA or its designee. The adjustment will apply only to the portion of the work of the item actually changed in character. At the option of SBCTA or its designee, the work of the item or portion of item which is

changed in character will be paid for by force account as provided in Special Provision 18, "Force Account Payment".

If the compensation for an item of work is adjusted under this Subsection K, the costs recognized in determining that adjustment shall be excluded from consideration in making an adjustment for that item of work under the provisions in Subsection G, "Increased or Decreased Quantities."

Failure of SBCTA or its designee to recognize a change in character of the work at the time the approved Contract Change Order is issued shall in no way be construed as relieving the Contractor of the duty and responsibility of filing a written protest within the 15 day limit as provided in Subsection L, "Procedure and Protest."

L. Procedure and Protest

A Contract Change Order approved by SBCTA or its designee may be issued to the Contractor at any time. Should the Contractor disagree with any terms or conditions set forth in an approved Contract Change Order not executed by the Contractor, the Contractor shall submit a written protest to SBCTA or its designee within 7 days after the receipt of the approved Contract Change Order. The protest shall state the points of disagreement, and, if possible, the Contract specification references, quantities and costs involved. If a written protest is not submitted, payment will be made as set forth in the approved Contract Change Order, and that payment shall constitute full compensation for all work included therein or required thereby. Unprotested approved Contract Change Orders will be considered as executed Contract Change Orders as that term is used in Subsections G, H and I, inclusive.

Where the protest concerning an approved Contract Change Order relates to compensation, the compensation payable for all work specified or required by that Contract Change Order to which the protest relates will be determined as provided in Subsections G, H and I, inclusive. The Contractor shall keep full and complete records of the cost of that work and shall permit SBCTA or its designee to have access thereto as may be necessary to assist in the determination of the compensation payable for that work.

Where the protest concerning an approved Contract Change Order relates to the adjustment of Contract time for the completion of the work, the time to be allowed therefore will be determined as provided in technical provisions Section 013199, "Period of Performance" and by a TIA prepared in accordance with the Contract Documents and accepted by SBCTA or its designee.

Proposed Contract Change Orders may be presented to the Contractor for consideration prior to approval by SBCTA or its designee. If the Contractor signifies acceptance of the terms and conditions of the proposed Contract Change Order by executing the document and if the change order is approved by SBCTA or its designee and issued to the Contractor, payment in accordance with the provisions as to compensation therein set forth shall constitute full compensation for all work included therein or required thereby. A Contract Change Order executed by the Contractor and approved by SBCTA or its designee is an executed Contract Change Order as that term is used in Subsections G, H and I, inclusive. An approved Contract Change Order shall supersede a proposed, but unapproved, Contract Change Order covering the same work.

SBCTA or its designee may provide for an adjustment of compensation as to a Contract item of work included in A Contract Change Order determined as provided in Subsections G, H and I, inclusive, if that item of work is eligible for an adjustment of compensation thereunder.

M. Extra Work

New and unforeseen work will be classed as extra work when determined by SBCTA or its designee that the work is not covered by any of the various items for which there is a Bid price or by combinations of those items. In the event portions of this work are determined by SBCTA or its designee to be covered by some of the various items for which there is a Bid price or combinations of those items, the remaining portion of the work will be classed as extra work. Extra work also includes work specifically designated as extra work in the plans or specifications.

This extra work will be initiated with a Change Notice (CN) issued by SBCTA or its designee. The Contractor shall respond within 7 calendar days with a detailed cost proposal with all labor, material, and equipment costs shown in a force account format in accordance with Special Provision 18, "Force Account Payment." Failure of the Contractor to submit a complete cost proposal within the allotted time will constitute a waiver by the Contractor of any and all rights for additional cost and/or time associated with the Change Notice. If the Contractor determines that a time extension is warranted, the Contractor shall submit a Time Impact Analysis (TIA) conforming to the requirements described in Section 013250 of the technical provisions.

The Contractor shall do the extra work and furnish labor, material and equipment therefore upon receipt of an approved Contract Change Order or by authorization noted in the Change Notice, and in the absence of an approved Contract Change Order or authorization noted in the Change Notice, the Contractor shall not be entitled to payment for the extra work.

Payment for extra work required to be performed pursuant to the provisions in this Subsection, in the absence of an executed Contract Change Order, will be made by force account as provided in Special Provision 11, "Payment", or as agreed to by the Contractor and SBCTA or its designee.

SP-13 CHANGE ORDER ACCOUNTING

In the event that an equitable adjustment under SP-12 entitled “Changes” cannot be agreed to in a timely manner, the Contracting Officer may issue a Change Order and require Change Order accounting. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred, segregable, direct costs (less allocable credits) of Work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with Paragraph entitled “Interpretation of Contract Disputes”.

SP-14 INTERPRETATION OF CONTRACT DISPUTES

Intentionally Omitted

SP-15 DISPUTES AND CLAIMS

The following provisions shall govern the nonbinding process provided for in Public Contract Code § 9204 (d)(2)(C) and (D), as set forth in Contract Article 17.

- A. Dispute Resolution Board. Disputes not informally resolved by the Parties shall be referred to the Dispute Resolution Board (“DRB”) for the DRB’s objective advice and opinions, which shall be advisory only and not binding. The purpose of the DRB is to facilitate the timely and equitable resolution of disputes and avoid construction delay and litigation. Both Parties shall act in good faith to amicably and fairly settle their differences, and shall not indiscriminately refer disputes to the DRB.
1. Generally. A dispute shall be referred to the DRB only when the process provided in Sections 2 and 3.a., above, have failed to resolve the dispute. The DRB shall fairly and impartially consider disputes referred to it, and shall provide the Parties written recommendations. DRB recommendations are not binding.
 2. Operation.
 - a. The DRB shall formulate rules of operation, which shall be flexible and able to adapt to changing situations. The DRB may, with concurrence of the Parties, adopt new rules or modify existing rules as needed.
 - b. In order to keep abreast of construction developments and progress, the DRB members will stay informed of construction activity through regular written progress reports from SBCTA. The DRB shall visit the project and meet with representatives of the Parties at intervals requested by the Parties, and at times of critical construction events. The frequency of these visits shall be as agreed by the Parties and the DRB.
 - c. During DRB project visits, meetings shall be held at the job site. Each meeting shall consist of an informal round table discussion followed by field inspection of the work.

The round table discussion shall be attended by the Parties' selected personnel. The agenda shall generally include the following:

- i. Meeting convened by the Chairman of the DRB.
 - ii. Opening remarks by the SBCTA's representative.
 - iii. A description by the Contractor's representative of: work accomplished since the last meeting, current status of the work schedule, schedule for future work, potential disputes, claims and other controversies, and proposed solutions for these problems.
 - iv. Set tentative date for next project meeting.
- d. If the Parties desire, SBCTA will prepare minutes of the meetings, which will be circulated after the meeting by the Parties and DRB members.
 - e. Field inspection shall cover all active segments of the work. The DRB shall be accompanied by representatives of both SBCTA and the Contractor.

3. DRB Membership

- a. The DRB will consist of one (1) member selected by SBCTA and approved by the Contractor, one (1) member selected by the Contractor and approved by SBCTA, and a third member selected by the first two members and approved by both SBCTA and the Contractor. Normally, the third member will act as a Chairman for all DRB activities.
- b. DRB members shall have credible experience with the type of construction contemplated by this Contract and with contract interpretation. The goal in selecting the third member is to complement the construction experience of the first two and to provide leadership for the DRB's activities. DRB members must be impartial and have no conflicts of interest.
 - i. Criteria and Limitations for Membership on the DRB:
 - Members shall not have any ownership interest in any Party to this Contract or any financial interest in this Contract, except for payment for services on the DRB.
 - Except for fee-based consulting services on other projects, members shall not have been previously employed by, or have had financial ties to, any Party to this contract.
 - Member shall not have had a recent close relationship, whether professional or personal, with any Party to this contract.
 - Members shall not have had prior involvement in the Project that is the subject of this Contract or with any contractor, subcontractor or supplier involved in the Project.
 - ii. Prior to appointment to the DRB, prospective members shall submit disclosure statements for the Parties' approval. Each statement shall include: a resumé; a declaration, signed under penalty of perjury, describing all past, present, and

potential future relations to the Project and with all parties involved in the Project, including any close, professional or personal relationships, and any other real or potential conflicts of interest. Members shall have a continuing duty, throughout membership on the DRB, to disclose all real and potential conflicts of interest that arise at any time during their service on the DRB.

- iii. The Parties shall not employ any DRB member, nor have any contact with any DRB member regarding employment, during the pendency of the Project. The Parties shall not consult with any individual DRB member nor seek the advice of any DRB member, at any time. DRB members shall report any inappropriate contact by a Party to the other Party. If inappropriate contact is reported, the non-offending Party may cancel the DRB process, in which case the offending Party shall reimburse the non-offending Party for all DRB costs incurred to date.
 - iv. Within six (6) weeks after award of this Contract, each Party shall select a DRB member. When those members have agreed to serve on the DRB, they shall select the third member. The third member shall be selected within four (4) weeks after the first two members are notified to proceed with selection of the third member. In the event of an impasse in selection of the third member, SBCTA and Contractor shall mutually select the third member.
 - v. SBCTA, Contractor, and all three (3) members of the DRB shall promptly execute an agreement setting forth the compensation of DRB members and other terms and conditions of their services, including the requirement that DRB members provide notification of any possible or potential conflict of interest or any inappropriate contact by a party to this contract.
4. Procedure and Schedule. Disputes shall be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. The DRB shall determine the time periods for submission of information and the parties and the DRB may determine whether a hearing is required. Disputes shall be addressed as early as practicable and defined as narrowly as possible; the intent is not to package multiple potential issues into one dispute but to address each issue as quickly and thoroughly as possible.
- a. A Party may refer a dispute to the DRB by delivering a written Notice of Referral of Dispute to DRB to the other Party and the DRB within 10 business days of SBCTA's provision of a written statement identifying the portion(s) of the claim that remains in dispute, as provided in Section 3.b., above. The Notice of Referral shall contain the proposed scope of the matter. The Parties shall present their positions in writing to each other and the DRB within 10 days of delivery of a Notice of Referral of Dispute.
 - b. Within ten days of delivery of the Notice of Referral, each Party shall submit, to the other Party and to the DRB, a Statement of Dispute. The Statement of Dispute shall set forth clearly and in full detail the specific issues of the dispute and the Party's position.
 - c. The DRB shall notify the Parties if a hearing will be conducted, and if so, when and where the hearing will take place.
 - d. Both Parties shall have an opportunity to be heard and to offer evidence at any hearing. Detailed procedures are given in paragraph 5, below. Within two weeks of the hearing, the DRB will provide the Parties written recommendations for resolution of the dispute.

- e. Either Party may request a further meeting with the DRB for clarification of the DRB's recommendation. Said request shall be made, in writing, no later than seven (7) days after receipt of the DRB's written recommendations. The meeting shall be held within ten (10) days of delivery of said request, unless agreed to otherwise by the Parties.
- f. Within two (2) weeks of receipt of the DRB's recommendations or of the meeting for clarification, whichever is later, or such other time specified by the DRB, each Party shall advise the other and the DRB, in writing, whether that Party accepts or rejects, in whole or in part, the DRB's recommendations. If any Party accepts some, but not all, of the DRB's recommendations, it shall specify what parts it accepts and what parts it rejects. Should either Party fail to respond within the specified period, that Party shall be deemed to have accepted, in full, the DRB's recommendations.
- g. If participation in the DRB process does not resolve the dispute, the Parties can agree to refer the dispute back to the DRB or to proceed with further procedures set forth in this SP-15.

5. Conduct of Hearing.

- a. The DRB may request further written documentation and arguments, in addition to the Statements of Dispute, before the hearing.
- b. The DRB shall advise the Parties where the hearing will be held.
- c. The third member of the DRB will act as Chairman of the hearing. There will be no formal transcript. Audio or video recordings shall not be permitted.
- d. The Parties shall have representatives at all hearings. The Contractor will address the DRB first, followed by SBCTA. Each Party will then be allowed successive rebuttals, at the DRB's discretion, until all aspects are fully covered. The DRB members may ask questions, request clarification, or ask for additional data. In large or complex cases, additional hearings may be necessary. Both Parties shall be provided adequate opportunity to present all evidence, including documentation and oral testimony, regarding the issues before the DRB.
- e. During the hearings, no DRB member shall express any opinion about the merit of the dispute or any of its elements.
- f. After conclusion of the hearing(s), the DRB shall meet to formulate recommendations. All DRB deliberations shall be conducted in private and kept strictly confidential. The DRB's recommendations, together with an explanation of its reasoning, shall be submitted as a written report to both parties. The recommendations shall be based on the pertinent contract provisions, applicable laws and regulations, and the facts and circumstances involved in the dispute.
- g. The DRB shall make every effort to reach a unanimous recommendation. If the members are unable to reach unanimity, the dissenting member may prepare a minority report.

6. Compensation.

- a. SBCTA will prepare and mail regular written progress reports and other relevant data to the DRB members, will provide conference facilities for DRB meetings and hearings, and will bear the cost of these services.

- b. If the DRB requires special services, such as legal consultation, accounting data, research, and the like, the Parties must both agree. SBCTA and the Contractor shall share the cost equally.
 - c. The Contractor shall pay the invoices of the DRB member it appointed, and SBCTA shall pay the invoices of the DRB member it appointed.
 - d. The Contractor shall pay the invoices of the third DRB member, after both parties agree to the amounts, and for special services for the DRB. The Contractor will then invoice SBCTA for 50% of the invoices of the third DRB member and the cost of the special services. Submittal of invoices for 50% of the cost of services provided by the third DRB member and for such other special services as are mutually agreed upon under 2 above shall be separate from invoices for work performed under this contract. This amount shall neither be subject to retention as provided in the paragraph entitled "Payments" of these General Provisions, nor include mark-up of any kind. Refer to the Bid Schedule Item providing for the reimbursement of the Contractor's share of the Disputes Review Board (DRB) expenses.
7. Upon issuance of the Notice of Final Acceptance of this contract, the DRB shall cease to exist, except that the DRB may complete its work on any disputes that had been properly referred to it at the time of issuance of the Notice of Final Acceptance.
- B. Work to Continue During Pendency of Dispute. Except as provided specifically in other sections of this Agreement, while dispute resolution (including informal negotiations, DRB, mediation) is proceeding, both Parties shall continue to perform their obligations under the Contract.
- C. Judicial Review. If a dispute is not resolved through the above procedures, either Party may pursue available legal remedies in a civil action in accordance with Contract Article 24.

SP-16 PARTNERING REQUIREMENTS

Partnering

- a) SBCTA strongly supports the concept of a partnering process as generally practiced by the Associated General Contractors (AGC). This process attempts to establish working relationships among the parties through a voluntary, mutually developed, formal strategy of commitment and communication. This process attempts to create an environment where trust and teamwork prevent disputes, foster a cooperative bond to everyone's benefit, and facilitate the completion of a successful project. Partnering will be structured to draw on strengths of each organization to identify and achieve reciprocal goals. The objectives are effective and efficient contract performance so that the project can be completed on schedule, within budget, and in compliance with the contract.
- b) Parties to the partnering process may include SBCTA's Project Management, Procurement, Operations, and Maintenance Departments; the Contractor and its subcontractors; applicable cities; and various utility companies. SBCTA and the Contractor will make arrangements to determine participants and the agenda for the meetings.

- c) The partnering process contemplates an initial meeting of the parties that will facilitate the partnering relationship throughout the contract period. If warranted and agreed to by the parties, subsequent follow-up partnering meetings may be held during the contract period. The initial meeting should be held within thirty (30) calendar days after LNTP, within the vicinity of the project (San Bernardino), and should last no more than one (1) day. Prior to the meeting, SBCTA and the Contractor will agree on either a third-party partnering facilitator (consultant) or a party facilitator (Contractor or SBCTA), the location, refreshments (excluding alcoholic beverages), and meals. Any cost associated with the partnering process shall be agreed to and shared equally by SBCTA and the Contractor.
- d) The Contractor shall pay the actual costs incurred for the partnering meetings. Backup documents for the actual costs shall be submitted to SBCTA for reimbursement after the meeting. SBCTA will reimburse the Contractor for one half the cost. Reimbursement shall not be subject to retention as provided in the Contract nor include markup of any kind. An allowance item in the Bid Schedule is provided for this payment. These terms and conditions apply to all subsequent partnering meetings as well.
- e) SBCTA will not reimburse Contractor for costs incurred that are not agreed to before the meeting as provided in c), above.
- f) Partnering on a project shall not change the legal relationship of the parties to the contract nor shall relieve either party from any of the terms of the contract.

SP-17 SENSITIVE SECURITY INFORMATION (SSI) REQUIREMENTS

Purpose of SSI Standards

The purpose of these Sensitive Security Information Procedure is to establish standards for handling Sensitive Security Information (SSI) in order to minimize the risk of future threats and ensure that all SBCTA employees, Contractors and consultants comply with these requirements for marking, storing, controlling, transmitting, destroying, and managing the release or withholding of SSI.

STORAGE AND DISCLOSURE OF SSI

All persons determined to have a “need to know” SBCTA’s SSI (“Covered Person”) are responsible for ensuring that the information and records containing SSI are safeguarded at all times from disclosure to others.

A Covered Person must:

- (a) Take reasonable steps to safeguard SSI in that person’s possession or control from unauthorized disclosure. When a person is not in physical possession of SSI, the person must store it in a secure container, such as a locked desk or file cabinet or in a locked room.
- (b) Disclose, or otherwise provide access to, SSI only to Covered Persons who have a need to know, unless otherwise authorized in writing by SBCTA, the

Transportation Security Administration (TSA) or the Secretary of the Department of Transportation (DOT).

(c) Refer requests by other persons for SSI to SBCTA. All such requests shall contain the following information:

- (1) Positive identification of SSI (title, document numbers as applicable, etc.).
- (2) Purpose for making the copies.
- (3) Quantity of copies.
- (4) Identification of those persons for whom authorization to receive SSI is sought.

(d) Mark SSI as specified below in the section entitled "MARKING SSI."

(e) Dispose of SSI as specified below in the section entitled "DISPOSING OF SSI."

MARKING SSI

(a) Unmarked SSI. If a Covered Person receives a record containing SSI that is not marked as specified in this Provision, the Covered Person must:

- (1) Mark the record as specified in this Provision.
- (2) Inform the sender of the record that the record must be marked as specified in this Provision.

(b) Marking SSI: In the case of paper records containing SSI, a Covered Person must mark the record by placing the protective marking conspicuously on the top, and the distribution limitation statement on the bottom, of:

- (1) The outside of any front and back cover, including a binder cover or folder, if the document has a front and back cover;
- (2) Any title page;
- (3) Each page of the document.

(c) Protective marking: The protective marking is: SENSITIVE SECURITY INFORMATION.

(d) Distribution limitation statement: The distribution limitation statement is:

WARNING: This record contains Sensitive Security Information that is controlled under 49 C.F.R. parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know," as defined in 49 C.F.R. parts 15

and 1520, except with the written permission of SBCTA, the Administrator of the TSA or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action.

(e) Other types of records. In the case of non-paper records that contain SSI, including motion picture films, videotape recordings, audio recording, and electronic and magnetic records, a Covered Person must clearly and conspicuously mark the records with the protective marking and the distribution limitation statement such that the viewer or listener is reasonably likely to see or hear them when obtaining access to the contents of the record.

DISPOSING OF SSI.

(a) When SSI is no longer needed, it must be returned to SBCTA in its complete, original format, or promptly and completely destroyed.

(b) SSI must be destroyed completely to preclude recognition or reconstruction of the information. SSI must be destroyed by one of the following methods, listed in order of preference:

(1) Confetti/crosscut shredding.

(2) Tearing it into small pieces and assimilating it with other waste material. When destroying SSI by hand, it must be cut or torn into pieces measuring not more than 1/2 inch on any side, and mixed with other wastepaper material in the process.

(3) For non-paper material, SBCTA will instruct as to proper method of disposal/destruction.

NOTIFICATION OF DESTRUCTION OF SSI. When any Covered Person has disposed of SSI, the Covered Person must provide written notice to SBCTA's Procurement Manager. The notice must provide the following information:

(a) Identification of the SSI (e.g., title, document/copy numbers(s) as applicable, etc.);

(b) Number of copies destroyed;

(c) Date and place of destruction;

(d) Method of destruction.

(e) Residual SSI retained by Covered Person, if any.

SP-18 FORCE ACCOUNT

When extra work is to be paid for on a force account basis, the labor, materials, and equipment used in the performance of that work shall be subject to the approval of SBCTA or its designee and compensation will be determined as follows:

A. Work Performed By Contractor

The Contractor will be paid the direct costs for labor, materials and equipment used in performing the work determined as hereinafter provided in Subsection A.1 "Labor," Subsection A.2 "Materials," and Subsection A.3 "Equipment Rental," except where agreement has been reached to pay in conformance with the provisions in Subsection B, "Work Performed by Special Forces or Other Special Services."

To the total of the direct costs computed as provided in Subsection A.1 "Labor," Subsection A.2 "Materials," and Subsection A.3 "Equipment Rental," there will be added a negotiated markup of up to fifteen percent (15%) to the cost of labor, up to fifteen percent (15%) to the cost of materials, and up to fifteen percent (15%) to the equipment rental. The above markups shall constitute full compensation for all delay costs, overhead costs, and profit which shall be deemed to include all items of expense not specifically designated as cost or equipment rental in Subsection A.1 "Labor," Subsection A.2 Materials," and Subsection A.3, "Equipment Rental." The total payment made as provided above shall be deemed to be the actual cost of the work and shall constitute full compensation therefore.

- a. These mark-ups are full compensation for all overhead and small tools and for all other indirect costs of the changed work (representing the profit thereon). The Contractor's mark-up percentages shall also be considered to include applicable taxes, incidental job burdens, general home office expenses, bond, and all other overhead costs, regardless of the Change in Contract time for performance.
- b. When any of the changed work is performed by a subcontractor, the mark-ups set forth above shall include the subcontractor costs. Only one such mark-up will be permitted through all tiers of subcontractor and/or suppliers.
- c. No additional fee for mark-up of the subcontractor's compensation shall be allowed the Contractor.
- d. For purposes of the foregoing mark-ups, suppliers of major materials/equipment specially fabricated or modified for use in the Contract (such as steel girders/precast concrete structural members, fully or partially fabricated equipment's) shall be considered to be subcontractors.
- e. No mark-up shall be paid to the Contractor for any material furnished by SBCTA.
- f. No mark-up will be allowed if Unit Prices established in the Contract are utilized in the proposal preparation.
- g. Where the Contractor's or any tier subcontractor's portion of a Change involves credit items, or the proposed Change is a fully deductible Change, the Contractor shall utilize the same mark-ups as defined in Subsections a through f above in computing the value of the credit.

1. Labor

The Contractor will be paid the cost of labor for the workers (including foremen when authorized by SBCTA or its designee), used in the actual and direct performance of the

work. The cost of labor, whether the employer is the Contractor, subcontractor or other forces, will be the sum of the following:

a. Actual Wages

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

b. Labor Surcharge

To the actual wages, as defined in Subsection A.1.a "Actual Wages," will be added a labor surcharge set forth in the Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the Contract. The labor surcharge shall constitute full compensation for all payments imposed by state and federal laws and for all other payments made to, or on behalf of, the workers, other than actual wages as defined in Subsection A.1.a "Actual Wages," and subsistence and travel allowance as specified in Subsection A.1.c "Subsistence and Travel Allowance."

c. Subsistence And Travel Allowance

The actual subsistence and travel allowance paid to the workers in conformance with the requirements in Labor Code Section 1773.8.

2. Materials

SBCTA reserves the right to furnish any materials it deems advisable and the Contractor shall have no claim for costs and markup on those materials. For purposes of this Special Provision, the term "purchaser" shall mean Contractor, subcontractor or other person or entity making a purchase for the work from a supplier.

Only materials furnished by the Contractor and necessarily used in the performance of the work will be paid for. The cost of those materials will be the cost to the purchaser, except as the following are applicable:

a. Offered Discounts

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

b. Indirect Procurements

If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to the purchaser, the cost of those materials shall be deemed to be the price paid to the actual supplier as

determined by SBCTA or its designee plus the actual costs, if any, incurred in the handling of the materials.

c. Self-Supplied Materials

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

d. Excessive-Priced Materials

If the cost of the materials is, in the opinion of SBCTA or its designee, excessive, then the cost of the material shall be deemed to be the lowest current wholesale price at which the materials were available in the quantities concerned delivered to the jobsite, less any discounts as provided in Subsection A.2.a, "Offered Discounts."

e. Evidence of Cost of Materials

If the Contractor does not furnish satisfactory evidence of the cost of the materials from the actual supplier thereof within thirty (30) calendar days after the date of delivery of the material or within fifteen (15) calendar days after acceptance of the contract, whichever occurs first, SBCTA reserves the right to establish the cost of the materials at the lowest current wholesale prices at which the materials were available in the quantities concerned delivered to the location of the work, less any discounts as provided in Subsection A.2.a, "Offered Discounts."

3. Equipment Rental

The Contractor will be paid for the use of equipment at the rental rates listed for that equipment in the Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the Contract, regardless of ownership and any rental or other agreement, if they may exist, for the use of that equipment entered into by the Contractor, except that for those pieces of equipment with a rental rate of \$10.00 per hour or less as listed in the Labor Surcharge and Equipment Rental Rates publication and which are rented from a local equipment agency, other than Contractor-owned, the Contractor will be paid at the hourly rate shown on the rental agency invoice or agreement for the time used on force account work as provided in Subsection A.3.a, "Equipment on the Work." If a minimum equipment rental amount is required by the local equipment rental agency, the actual amount charged will be paid to the Contractor.

If it is deemed necessary by SBCTA or its designee to use equipment not listed in the Labor Surcharge and Equipment Rental Rates publication, a suitable rental rate for that equipment will be established by SBCTA or its designee. The Contractor may furnish any cost data which might assist SBCTA or its designee in the establishment of the rental rate. If the rental rate established by SBCTA or its designee is \$10.00 per hour or less, the provisions above concerning rental of equipment from a local equipment agency shall apply.

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

Operators of rented equipment will be paid for as provided in Subsection A.1 "Labor".

All equipment shall, in the opinion of SBCTA or its designee, be in good working condition and suitable for the purpose for which the equipment is to be used.

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

Individual pieces of equipment or tools not listed in the Labor Surcharge and Equipment Rental Rate publication and having a replacement value of \$500 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefore.

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

a. Equipment on the Work

The rental time to be paid for equipment on the work shall be the time the equipment is in operation on the extra work being performed, and in addition, shall include the time required to move the equipment to the location of the extra work and return the equipment to the original location or to another location requiring no more time than that required to return the equipment to its original location, except that moving time will not be paid for if the equipment is used at the site of the extra work on other than the extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made if the equipment is used at the site of the extra work on other than the extra work.

The following shall be used in computing the rental time of equipment on the work:

- i. When hourly rates are listed, less than thirty (30) minutes of operation shall be considered to be 0.5 hour of operation.
- ii. When daily rates are listed, less than four (4) hours of operation shall be considered to be 0.5 work day operation.

b. Equipment Not on the Work

For the use of equipment moved in on the work and used exclusively for extra work paid for on a force account basis, the Contractor will be paid the rental rates listed in the Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is in effect on the date upon which the work is

accomplished and which is a part of the Contract, or determined as provided in Subsection A.3, "Equipment Rental" and for the cost of transporting the equipment to the location of the work and its return to its original location, all in accordance with the following provisions:

- i. The original location of the equipment to be hauled to the location of the work shall be agreed to by SBCTA or its designee in advance.
- ii. SBCTA will pay the costs of loading and unloading the equipment.
- iii. The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers.
- iv. The rental period shall begin at the time the equipment is unloaded at the site of the extra work, shall include each working day that the equipment is at the site of the extra work, excluding Saturdays, Sundays and legal holidays unless the equipment is used to perform the extra work on those days, and shall terminate at the end of the day on which SBCTA or its designee directs the Contractor to discontinue the use of the equipment. The rental time to be paid per day will be in accordance with the following:

Hours Equipment is in Operation	Hours to be Paid
0	0.00
0.5	0.50
1.0	1.00
1.5	1.50
2.0	2.00
2.5	2.50
3.0	3.00
3.5	3.50
4.0	4.00
4.5	4.50
5.0	5.00
5.5	5.50
6.0	6.00
6.5	6.50
7.0	7.00

Hours Equipment is in Operation	Hours to be Paid
7.5	7.50
8.0	8.00
Over 8	Hours in Operation

The hours to be paid for equipment which is operated less than eight (8) hours due to breakdowns, shall not exceed eight (8) less the number of hours the equipment is inoperative due to breakdowns.

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

When daily rates are listed, payment for 0.0 day will be made if the equipment is not used. If the equipment is used, payment will be made for one day.

Should the Contractor desire the return of the equipment to a location other than its original location, SBCTA will pay the cost of transportation in accordance with the above provisions, provided the payment shall not exceed the cost of moving the equipment to the work.

Payment for transporting, and loading and unloading equipment, as above provided, will not be made if the equipment is used on the work in any other way than upon extra work paid for on a force account basis.

When extra work, other than work specifically designated as extra work in the plans and specifications, is to be paid for on a force account basis and SBCTA or its designee determines that the extra work requires the Contractor to move on to the work equipment which could not reasonably have been expected to be needed in the performance of the Contract, SBCTA or its designee may authorize payment for the use of the equipment at equipment rental rates in excess of those listed as applicable for the use of that equipment subject to the following additional conditions:

- i. SBCTA or its designee shall specifically approve the necessity for the use of particular equipment on that work.
- ii. The Contractor shall establish to the satisfaction of SBCTA or its designee that the equipment cannot be obtained from the Contractor's normal equipment source or sources and those of the Contractor's subcontractors.
- iii. The Contractor shall establish to the satisfaction of SBCTA or its designee that the proposed equipment rental rate for the equipment from the proposed source is reasonable and appropriate for the expected period of use.

- iv. SBCTA or its designee shall approve the equipment source and the equipment rental rate to be paid by SBCTA before the Contractor begins work involving the use of that equipment.

c. Owner-Operated Equipment

When owner-operated equipment is used to perform extra work to be paid for on a force account basis, the Contractor will be paid for the equipment and operator, as follows:

- i. Payment for the equipment will be made in conformance with the provisions in Subsection A.3, "Equipment Rental".
- ii. Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar equipment already on the project or, in the absence of other workers operating similar equipment, at the rates for that labor established by collective bargaining agreements for the type of workers and location of the work, whether or not the owner-operator is actually covered by an agreement. A labor surcharge will be added to the cost of labor described herein, in conformance with the provisions in Subsection A.1.b, "Labor Surcharge."
- iii. To the direct cost of equipment rental and labor, computed as provided herein, will be added the markups for equipment rental and labor as provided in Subsection A, "Work Performed by Contractor".

d. Dump Truck Rental

Dump truck rental shall conform to the provisions in Subsection A.3, "Equipment Rental", Subsection A.3.a, "Equipment on the Work," and Subsection A.3.b, "Equipment not on the Work," except as follows:

- i. Fully maintained and operated rental dump trucks used in the performance of extra work paid for on a force account basis will be paid for at the same hourly rate paid by the Contractor for use of fully maintained and operated rental dump trucks in performing Contract item work.
- ii. In the absence of Contract item work requiring dump truck rental, SBCTA or its designee will establish an hourly rental rate to be paid. The Contractor shall provide SBCTA or its designee with complete information on the hourly rental rates available for rental of fully maintained and operated dump trucks.
- iii. The provisions in Subsection A.1, "Labor," shall not apply to operators of rented dump trucks.

- iv. The rental rates listed for dump trucks in the Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates shall not apply.
- v. To the total of the rental costs for fully maintained and operated dump trucks, including labor, there will be added a negotiated markup of up to a total of 15 percent (15%) for both the prime and the subcontractor. No separate markup will be made for labor.

The provisions in Subsection A.3.c, "Owner-Operated Equipment," shall not apply to dump truck rentals.

B. Work Performed By Special Forces or Other Special Services

When SBCTA or its designee and the Contractor, by agreement, determine that a special service or an item of extra work cannot be performed by the forces of the Contractor or those of any of the Contractor's subcontractors, that service or extra work item may be performed by a specialist. Invoices for the service or item of extra work on the basis of the current market price thereof may be accepted without complete itemization of labor, material and equipment rental costs when it is impracticable and not in accordance with the established practice of the special service industry to provide a complete itemization.

In those instances where a Contractor is required to perform extra work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the jobsite, the charges for that portion of the extra work performed in the facility may, by agreement, be accepted as a specialist billing.

To the specialist invoice price, less a credit to SBCTA for any cash or trade discount offered or available, whether or not the discount may have been taken, will be added a negotiated amount up to 15 percent (15%) in lieu of the percentages provided in Subsection A, "Work Performed by Contractor."

C. Records

The Contractor shall maintain records in such a manner as to provide a clear distinction between the direct costs of extra work paid for on a force account basis and the costs of other operations.

From the above records, the Contractor shall furnish SBCTA or its designee completed daily extra work reports, either on forms furnished by SBCTA or on computerized facsimiles of SBCTA forms acceptable to the Engineer, for each day's extra work to be paid for on a force account basis. The daily extra work reports shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor or other forces, except for charges described in Subsection B, "Work Performed by Special Forces or Other Special Services." The daily extra work reports shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment, and hours operated.

Material charges shall be substantiated by valid copies of vendor's invoices. The invoices shall be submitted with the daily extra work reports, or if not available, the invoices shall be submitted with subsequent daily extra work reports. Should the vendor's invoices not be submitted within sixty (60) calendar days after the date of delivery of the material or within fifteen (15) calendar days after the acceptance of the contract, whichever occurs first, SBCTA reserves the right to establish the cost of the materials at the lowest current wholesale prices at which those materials were available in the quantities concerned delivered to the location of work less any discounts as provided in Subsection A.2.a "Offered Discounts."

Daily extra work reports shall be signed by the Contractor or the Contractor's authorized representative.

SBCTA or its designee will compare the Engineer's records with the completed daily extra work reports furnished by the Contractor and make any necessary adjustments. When these daily extra work reports are agreed upon and signed by both Parties, the reports shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit by SBCTA.

The Contractor's cost records pertaining to work paid for on a force account basis shall be open to inspection or audit by representatives of SBCTA, during the life of the Contract and for a period of not less than three (3) years after the date of acceptance thereof, and the Contractor shall retain those records for that period. Where payment for materials or labor is based on the cost thereof to forces other than the Contractor, the Contractor shall make every reasonable effort to ensure that the cost records of those other forces will be open to inspection and audit by representatives of SBCTA on the same terms and conditions as the cost records of the Contractor. If an audit is to be commenced more than sixty (60) calendar days after the acceptance date of the contract, the Contractor will be given a reasonable notice of the time when the audit is to begin.

D. Payment

Payment as provided in Subsection A, "Work Performed by Contractor," and Subsection B "Work Performed by Special Forces or Other Special Services," shall constitute full compensation to the Contractor for performance of work paid for on a force account basis and no additional compensation will be allowed therefore. The payment will be made in conformance with the provisions in Special Provision 11 "Payment."

SP-19 SUBCONTRACTING

The Contractor shall give personal attention to the fulfillment of the Contract and shall keep the work under the Contractor's control.

All persons engaged in the work of construction will be considered as employees of the Contractor and the Contractor will be held responsible for their work, which shall be subject to the provisions of the Contract and specifications.

The Contractor shall perform, with the Contractor's own organization, Contract work amounting to not less than 30 percent (30%) of the original Total Contract Price, except that any designated "Specialty

Items" may be performed by subcontract and the amount of any designated "Specialty Items" performed by subcontract may be deducted from the original Total Contract Price before computing the amount of work required to be performed by the Contractor with the Contractor's own organization. When items of work in the Bid Booklet are preceded by the letters (S) or (S-F), those items are designated as "Specialty Items." When no designation of Specialty Items is present in the Bid Booklet, there are no Specialty Items for the work. Where an entire item is subcontracted, the value of work subcontracted will be based on the Contract item Bid price. When a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated percentage of the Contract item Bid price, determined from information submitted by the Contractor, subject to approval by SBCTA or its designee.

Any material purchased by the Contractor will only be counted towards their own Contract work percentage (30% requirement) at the original total Contract value of those items if the material is installed by the Contractor with his own forces.

Subcontracts shall include provisions that the Contract between SBCTA and the Contractor is part of the subcontract, and that all terms and provisions of the Contract are incorporated in the subcontract. Subcontracts shall also contain certification by the subcontractor that the subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontracted work. Copies of subcontracts shall be available to SBCTA or its designee upon written request, and shall be provided to SBCTA or its designee at the time any litigation against SBCTA concerning the project is filed.

Before work is started on a subcontract, the Contractor shall file with SBCTA or its designee a written statement showing the work to be subcontracted, the names of the subcontractors, and the description of each portion of the work to be subcontracted.

Pursuant to the provisions of Section 6109 of the Public Contract Code, the Contractor shall not perform work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Sections 1777.1 or 1777.7 of the Labor Code. The list of debarred contractors is available from the Department of Industrial Relations web site at: www.dir.ca.gov/DLSE/Debar.html.

When a portion of the work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to SBCTA, the subcontractor shall be removed immediately on the requisition of SBCTA or its designee and shall not again be employed on the work.

SP-20 DIFFERING SITE CONDITION

The Contractor shall promptly, and before the following conditions are disturbed, notify SBCTA or its designee, in writing, of any:

1. Material that the Contractor believes may be unforeseen material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
2. Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to Bidders prior to the deadline for submitting Bids.

3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract information about the site made available to Bidders prior to the deadline for submitting Bids, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the Party discovering those conditions shall promptly notify the other Party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

Upon such written notification, SBCTA or its designee will investigate the conditions, and if SBCTA or its designee determines that the conditions materially differ, or involve hazardous waste, and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. SBCTA or its designee will notify the Contractor of SBCTA or its designee's determination whether or not an adjustment of the Contract is so warranted.

In the event that a dispute arises between SBCTA and the Contractor whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the Contractor and SBCTA.

No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

No Contract adjustment will be allowed under the provisions specified in this Special Provision for any effects caused on unchanged work.

Any Contract adjustment warranted due to differing site conditions will be made in conformance with the provisions as specified in these Special Provisions, except as otherwise provided.

SP-21 TEMPORARY SUSPENSION OF WORK

SBCTA or its designee shall have the authority to suspend the work wholly or in part, for any time period as SBCTA or its designee deems necessary, due to unsuitable weather or other conditions considered unfavorable for the suitable prosecution of the work, or for any time period as SBCTA or its designee deems necessary due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the Contract. The Contractor shall immediately comply with the written order of SBCTA or its designee to suspend the work wholly or in part. The suspended work shall be resumed when conditions are favorable, and methods are corrected, as ordered or approved in writing by SBCTA or its designee.

In the event that a suspension of work is ordered as provided above, and should that suspension be ordered by reason of the failure of the Contractor to carry out orders or to perform any provision of the Contract, or by reason of weather conditions being unsuitable for performing any item or items of

work, which work, in the sole opinion of SBCTA or its designee, could have been performed prior to the occurrence of the unsuitable weather conditions had the Contractor diligently prosecuted the work when weather conditions were suitable, the Contractor, at the Contractor's expense, shall do all the work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by public traffic or rail traffic during the period of that suspension as provided in the specifications and as specified in these Special Provisions for the work. In the event that the Contractor fails to perform the work above specified, SBCTA will perform that work and the cost thereof will be deducted from moneys due or to become due the Contractor.

In the event that a suspension of work is ordered by SBCTA or its designee due to unsuitable weather conditions, and in the sole opinion of SBCTA or its designee, the Contractor has prosecuted the work with energy and diligence prior to the time that operations were suspended, the cost of providing a smooth and unobstructed passageway through the work will be paid for as extra work as provided in these Special Provisions or, at the option of SBCTA or its designee, that work will be performed by SBCTA at no cost to the Contractor.

If SBCTA or its designee orders a suspension of all of the work or a portion of the work which is the current controlling operation or operations, due to unsuitable weather or to other conditions considered unfavorable to the suitable prosecution of the work, the days on which the suspension is in effect shall not be considered working days as defined in technical provisions Section 013199, "Period of Performance". If a portion of work at the time of the suspension is not a current controlling operation or operations, but subsequently does become the current controlling operation or operations, the determination of working days will be made on the basis of the then current controlling operation or operations.

If a suspension of work is ordered by SBCTA or its designee, due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the Contract, the days on which the suspension order is in effect shall be considered working days if those days are working days within the meaning of the definition set forth in technical provisions Section 013199, "Period of Performance".

In addition to the requirements specified above, the following shall apply:

1. If the performance of all or any portion of the work is suspended or delayed by SBCTA or its designee in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation or Contract time or additional compensation and Contract time is due as a result of that suspension or delay, the Contractor shall submit to SBCTA or its designee in writing a request for adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for the adjustment.
2. Upon receipt, SBCTA or its designee will evaluate the Contractor's request. If SBCTA or its designee agrees that the cost and/or time required for the performance of the Contract has increased as a result of the suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, SBCTA or its designee will make an adjustment (excluding profit) and modify the Contract in writing accordingly. SBCTA or its designee will notify the Contractor of SBCTA or its designee's determination whether or not an adjustment of the Contract is warranted.

3. No Contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.
4. No Contract adjustment will be allowed under the provisions specified in this Special Provision to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any term or condition of this Contract.
5. Any Contract adjustment warranted due to suspension of work ordered by SBCTA or its designee will be made in the same manner as provided for ROW delays in Special Provision 21, "Right-of-Way Delays."

In the event of a suspension of work under any of the conditions set forth in this Special Provision, the suspension of work shall not relieve the Contractor of the responsibilities as set forth in the Contract.

SP-22 RIGHT-OF-WAY DELAYS

If, through the failure of SBCTA to acquire or clear ROW, the Contractor sustains loss which could not have been avoided by the judicious handling of forces, equipment and plant, there shall be paid to the Contractor that amount that SBCTA or its designee may find to be a fair and reasonable compensation for that part of the Contractor's actual loss, that, in the opinion of SBCTA or its designee, was unavoidable, determined as follows:

Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of extra work paid for on a force account basis, as provided in Special Provisions 12 and 16, with the following exceptions:

1. The right-of-way delay factor for each classification of equipment shown in the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates (http://www.dot.ca.gov/hq/construc/eqrr/Book_2018.pdf), which is a part of the Contract, will be applied to that equipment rental rate.
2. The time for which the compensation will be paid will be the actual normal working time during which the delay condition exists, but in no case will exceed eight (8) hours in any one day.
3. The days for which compensation will be paid will be the working days, excluding Saturdays, Sundays, and legal holidays, during the existence of the delay, except that when rental of equipment is paid for under the provisions in Special Provisions 12 and 16 subsection "Equipment Not on the Work," no payment will be made for right-of-way delays.

SP-23 ELECTRONIC DOCUMENT CONTROL

SBCTA will utilize construction management software by <https://C-MIS.com> . The CONTRACTOR shall utilize C-MIS to include, but not be limited to, transfer of submittals, RFI's, Change Order Requests, staking requests, response to deficiency notices, and payment applications. Full

compensation for effort associated with this requirement shall be included in the various items of work, and no additional compensation will be provided.

SP-24 ALLOWANCE PROCESS

1. SBCTA may, at any time, order an allowance adjustment to be completed under an ALLOWANCE bid item within the general scope of that bid item. This work will be initiated by a Bid Item Allowance Adjustment (BIAA) and will be executed upon a fully negotiated cost for that work. Upon execution of any BIAA, the Contractor shall promptly proceed with the work. Contractor shall not proceed with work noted in the BIAA unless explicitly instructed in the BIAA. The Contractor cannot charge against an allowance bid item without first being issued a BIAA.
2. Except as expressly permitted herein, no order, statement, or conduct of SBCTA or its designee or anyone purporting to represent SBCTA shall be treated as an allowance adjustment under the Contract or entitle the Contractor to an adjustment of compensation or time of performance under the Contract. The Contractor may request the initiation of an allowance adjustment by a Request for Change (RFC). Regardless of how an allowance adjustment is initiated or authorized, any compensation in money or time for an allowance adjustment can only be authorized by a written BIAA. The Contractor's records pertaining to allowance adjustments pursuant to this Section are subject to audit as set forth in the Section herein titled AUDITS.
3. Allowance adjustments within the general scope of the Contract include adding or revising work associated with the type of work described in the allowance bid item. Any Changes or extra work that may fall outside the allowance bid item will be dealt with per Special Provision 12, "Changes." SBCTA or its designee will determine whether work falls under Special Provision 12 or Special Provision 16. Any changes to Period of Performance will be addressed using Special Provision 12 "Changes."
4. Bid Item Allowance Adjustment (BIAA): A Bid Item Allowance Adjustment does not authorize the Contractor to commence performance of the work unless explicitly noted in the BIAA. Nothing in the Contract will be construed to bind SBCTA for acts of its employees and agents that exceed the authority actually delegated by SBCTA. The Contractor shall promptly notify SBCTA or its designee in writing when it receives direction, instruction, interpretation, or determination from any source that may lead to or cause any allowance adjustment. Such written notification shall be given to SBCTA before the Contractor acts on said direction, instruction, interpretation, or determination.
 - a. The BIAA issued by SBCTA shall expressly specify:
 - i. The intention to treat such items as an allowance adjustment;
 - ii. The kind, character, and limits of the allowance adjustment as far as can be ascertained by SBCTA;
 - iii. The terms under which adjustments to the allowance bid item will be determined;
 - iv. Payment provisions;

- v. Whether the Contractor is authorized to proceed with work immediately at force account basis.
- b. A BIAA that authorizes immediate work will be signed by SBCTA or its designee before being issued to the Contractor. Contractor shall sign and return the BIAA before any work is started on the items covered thereby. Work will be tracked on a force account basis for a BIAA that authorizes immediate work. A BIAA that authorizes immediate work shall contain a cost limitation that cannot be exceeded without prior written additional approval from SBCTA. For a BIAA that authorizes immediate work, the Contractor shall submit a final Cost Proposal to SBCTA within 7 calendar days of completion of the work authorized under the BIAA. SBCTA and the Contractor shall negotiate the adjustment to the bid item allowance, sign a record of negotiation, and, thereafter, incorporate such into the next payment application. Each BIAA must be negotiated in full and closed before it can be incorporated into the payment application.
- c. A BIAA that does not authorize immediate work will be signed by SBCTA or its designee before being issued to the Contractor. The Contractor shall sign and return the BIAA within 3 calendar days of the date the Contractor was issued the BIAA. Should the Contractor dispute any items noted within the BIAA, the Contractor shall return the BIAA unsigned with written explanation. For a BIAA that does not authorize immediate work, the Contractor shall submit a Cost Proposal to SBCTA within 7 calendar days of receipt of the BIAA. SBCTA and the Contractor shall negotiate the adjustment to the bid item allowance, sign a record of negotiation, and, thereafter, incorporate such into the next payment application. Each BIAA must be negotiated in full and closed before it can be incorporated into the payment application.
- d. Once a record of negotiation is signed, no further compensation for work included in that BIAA will be considered.
- e. A BIAA cannot be charged until work is completed.
- f. A BIAA can only be issued by SBCTA or its designee in response to an RFI, RFC, or when SBCTA or its designee determines there is work that requires an allowance adjustment.

5. Contractor's BIAA Cost Proposal

- a. For each BIAA issued, the Contractor shall submit a Cost Proposal to SBCTA or its designee. The proposal shall provide an itemized breakdown of Compensation for allowance adjustment work as determined using pricing guidelines found in Special Provision 16, "Force Account Payment." If any prices or other aspects are conditional, such as orders being made by a certain date or the occurrence of a particular event at a specified time, the Contractor shall identify these conditions in its proposal. The components and allowed costs to be used by the Contractor in preparing the proposal shall be those set forth in this Section and shall be presented in such a manner that all cost information can be easily identified and certified upon request. The submittal shall include current cost or pricing data as described in Special Provision 16, "Force Account Payment."
- b. If the Contractor does not submit the Cost Proposal by the required date, SBCTA or its designee reserves the right to issue a unilateral BIAA utilizing SBCTA's cost estimate. If SBCTA or its designee issues such a unilateral BIAA, the SBCTA's cost estimate shall be final and the Contractor shall not be entitled to dispute the amount. In addition, SBCTA or its designee

reserves the right to withhold payment on a BIAA if the requested Cost Proposal is not submitted by the required date.

- c. SBCTA or its designee may require that the Contractor supply appropriate documentation to support the prices proposed for allowance adjustments and may refuse to complete negotiations until satisfactory documentation is submitted. The Contractor's records shall be subject to audit and inspection.
- d. The Contractor shall maintain such records as SBCTA or its designee deems sufficient to distinguish the direct cost of an allowance adjustment on a BIAA from the cost of other operations. When directed by SBCTA or its designee, the Contractor shall submit daily, and no later than each subsequent workday, to SBCTA or its designee reports of allowance adjustment work on forms approved by SBCTA or its designee. The reports shall itemize all costs for labor, materials, and equipment and give the total of costs to date for the allowance adjustment. For labor, the reports shall include names, hours worked, and rates of pay for all classifications (up to but not including general foreman) that are engaged in the actual direct performance of the work.
- e. When SBCTA determines that the method of payment for a BIAA is to be on a force account basis, the Contractor shall maintain and segregate cost and pricing data, book, records, documents, and any other accounting evidence sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred.
- f. All records and reports shall be made immediately available to SBCTA or its designee upon request. The cost of preparing such reports shall be included in the Contractor's overhead compensation. All allowance adjustment reports shall be signed daily by the Contractor or its Authorized Representative, and by SBCTA or its designee. SBCTA or its designee will compare its records with the Contractor's reports, make any necessary adjustments, and determine the costs of the allowance adjustment work. Such reports shall be the basis for final payment of the BIAA.
- g. If the Contractor has submitted cost or pricing data in connection with the pricing of any allowance adjustment (unless the pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation), SBCTA or its designee and other authorized agencies shall have the right to examine and audit books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing or performing the allowance adjustment in order to evaluate the accuracy, completeness, and currency of the cost or pricing data.
- h. Also subject to audit review by SBCTA or its designee, or its Authorized Representatives, shall be the Contractor's Records relating to those items on a progress payment application that relate to (1) Work done under a BIAA with authorization to proceed with work immediately, (2) Materials or services not yet incorporated into the work, and (3) Work done under a BIAA negotiated on a time and Materials, Unit Price, or lump sum basis. If the audit indicates that the Contractor has been overpaid under a previous payment application, that overpayment shall be credited against current progress payment applications.

SP-25 WORK INEFFICIENCY

1. If the Contractor intends to claim additional costs for inefficiencies due to a Contract delay or other Change, the Contractor must provide project specific data on rate of production and cost of production of the same work item within this Contract.

- a. Non-impacted production will be determined by:
 - i. Average production of the last 3 days of work on that item, or
 - ii. Production noted in the approved baseline schedule, whichever is less.

If 3 days of prior production data is not available, then the Contractor shall use the average of the production for 3 days of non-impacted production, whether before or after the impact, that are closest to the time of impact. If 3 days are not available, then the number of non-impacted production days that are available will be used. If it is determined, by SBCTA or its designee, there are no days of non-impacted production, then the production noted in the approved baseline schedule will be utilized. If it is determined there are no days of non-impacted production, the labor and equipment will be considered to be the same as the labor and equipment utilized during impacted production unless the Contractor can demonstrate that the character of work has changed, in which case the Contractor and SBCTA will negotiate the labor and equipment for non-impacted work based on data from a similar task on a similar project.

2. Contractor must provide written notice via Request for Change (RFC) to SBCTA of impacted production prior to work beginning on that task. Failure to notify SBCTA waives the Contractor's right to claim inefficiency for that task. Written notice must provide detailed information regarding the inefficiency:
 - a. When the impact will occur,
 - b. Why it will occur;
 - c. Estimated costs of the inefficiency.
3. See SP-12 CHANGES for additional requirements.

SP-26 INTENTIONALLY OMITTED

SP-27 ESCROW OF DOCUMENTS

A. Contractor Representation

1. Contractor agrees to execute an Escrow Agreement concurrent with Award.
2. Contractor submitted to an Escrow Agent, within seventy-two (72) hours of award, one (1) copy of all documentary information generated in preparation of its Bid/Proposal prices for this Contract, and included the same information from all subcontractors named in its Bid/Proposal. This material is herein referred to as "Proprietary Bid Documents".
3. Contractor submitted its Proprietary Bid Documents in sealed containers, clearly marked on the outside with:

- a. Label "Proprietary Bid Documents";
 - b. Contractor's full legal name and date of its submittal;
 - c. SBCTA's project name; and
 - d. SBCTA's Contract number and title.
4. Contractor's Proprietary Bid Documents are in the sole custody of an Escrow Agent, who will hold the documents in escrow for the duration of the Contract. The Proprietary Bid Documents are not public records but are, and shall always remain, the property of the Contractor, subject to review by SBCTA and the Contractor, and any local, state or Federal law enforcement or regulatory agencies requesting access to these documents. The Proprietary Bid Documents submitted to the Escrow Agent shall not be reviewed prior to award of the Contract and shall be returned to the Contractor when SBCTA determines the Contract has been completed, has issued a Certificate of Final Acceptance, and has recorded a Notice of Completion (if required).
 5. The Proprietary Bid Documents constitute all the information used in the preparation of Contractor's Bid/Proposal, and Contractor shall not rely upon other Bid/Proposal preparation information in asserting or defending Claims or Disputes.
 6. Nothing in the Proprietary Bid Documents shall change or modify the terms or conditions of the Contract. Further, the Proprietary Bid Documents are not part of the Contract Documents.
 7. If requested by SBCTA or if SBCTA agrees it would be helpful, Proprietary Bid Documents may be used by SBCTA and Contractor to assist in the negotiation of Claims, and in the settlement of Claims, Disputes and other contractual matters.

B. Format and Contents

1. Contractor submitted its Proprietary Bid Documents in its usual cost-estimating format. Preparation and submittal of the Proprietary Bid Documents are at the sole expense of the Contractor.
2. Proprietary Bid Documents are in the English language. All dimensions and measurements are in the English Imperial (lb./foot/sec.) system. All costs have been identified.
3. The Proprietary Bid Documents include:
 - a. All quantity take offs;
 - b. Calculations or rates of production and progress;
 - c. Copies of quotes from subcontractors and suppliers;
 - d. Memoranda, narratives, and subcontractor scope letters;
 - e. All add/deduct sheets;
 - f. Copies, on CD, DVD, or other electronic storage device (readable by Windows Explorer) of all computer data files containing electronic schedules, cut/add sheets, material takeoff sheets, bid estimate sheets, bid proposals, recap sheets, vendor quotations, as-planned schedules, preliminary schedules, subcontractor scope letters, and computer printouts of the electronic schedule; and
 - g. All other information used by Contractor to arrive at the prices contained in its Bid/Proposal.

C. Incorporation of Certification

1. The Certification submitted by Contractor (with the Proprietary Bid Documents) is incorporated herein as though fully set forth. This Certification shall state the following:

"I certify under penalty of perjury and pursuant to the laws of the State of California that all the Proprietary Bid Documents submitted in accordance with the instructions contained in the Instructions to Bidders constitute all the information used in the preparation of the Bid, and I further certify I have personally examined the contents of the Proprietary Bid Documents and found that the documents herewith submitted are complete and that no other Bid preparation information exists."

D. Storage and Access

1. Contractor's Proprietary Bid Documents shall be stored in a secure location with the Escrow Agent.
2. SBCTA shall pay all fees and expenses in connection with Escrow.
3. Access to the Proprietary Bid Documents shall be limited to SBCTA, the Contractor, and any local, state, or Federal agencies requesting access to these documents.

E. Examination After Award of Contract

1. The Proprietary Bid Documents may be examined at any time deemed necessary after award of the Contract:
 - a. By SBCTA and/or the Contractor, to ensure Proprietary Bid Documents are complete.
 - b. By SBCTA and/or the Contractor, to assist in settlement of any Claims or Disputes, including in the processes set forth in SP-15, Claims and Disputes, or any other contractual matters; or
 - c. By any local, State, or Federal law enforcement or regulatory agency, to assist in any agency investigation.
2. Examination of the Proprietary Bid Documents, after award of the Contract, is subject to the following conditions:
 - a. SBCTA and Contractor shall each designate, in writing to the other, no more than three (3) calendar days prior to examination, representative(s) who are authorized to examine the Proprietary Bid Documents.
 - b. Access to the Proprietary Bid Documents will be afforded only to duly designated authorized representatives of SBCTA and/or Contractor.
 - c. SBCTA will not reproduce any Proprietary Bid Documents without Contractor's written consent.

SP-28 THIRD-PARTY AGREEMENTS AND INTERFACES

In managing the Schedule, the Contractor shall comply with the SBCTA obligations on behalf of SBCTA in the agreements identified in the Third-Party Agreements Matrix, attached and incorporated herein as **Appendix-1 of this Special Provision**. All completed agreements and the latest draft of the uncompleted agreements identified in the Third-Party Agreements Matrix have been provided to Contractor.

In addition, Contractor shall accommodate three critical interfaces, as described below, with other work being performed at the same time and in the same area. The Contract price shall account for these third-party agreements and interfaces. No additional Changes in the work due to these third-party agreements and interfaces will be permitted, as provided in SP-12, Changes, Contractor may be entitled to an extension of time, if Contractor satisfies all other requirements set forth in the Contract, but Contractor shall not be entitled to any additional compensation in accordance with SP-12, Changes.

Without limiting the requirements of this Special Provision, Contractor shall comply with Technical Provision 013121.

A. Southern California Edison (SCE) Utility Relocation Work

During the Period of Performance, SCE or its contractor will be performing work along the corridor to relocate conflicting utilities owned by SCE. Contractor will be required to coordinate its work with SCE or its contractor to ensure that the utility relocation work proceeds uninterrupted and that the relocated facilities are undisturbed by Contractor.

A matrix of the anticipated utility interfaces is identified in Third Party Utility Coordination Technical Provision 013121. Pursuant to the Programmatic Agreement between SCE and SBCTA, identified as Agreement No. 22-1002812 in the Third-Party Agreements Matrix, SCE will prepare relocation plans for a group of utility conflicts and once SBCTA has approved those plans, SCE and SBCTA will enter into a utility relocation agreement for that group of utility conflicts. Pursuant each utility relocation agreement, SCE will begin the relocation work according to the plans attached to each agreement.

Contractor will receive a copy of each executed utility relocation agreement. Contractor will comply with the SBCTA obligations in the resulting relocation agreement. Contractor shall coordinate and sequence its work activities to accommodate SCE's relocation work. It will be Contractor's responsibility to ensure its Work does not interfere with SCE's relocation work. It will be Contractor's responsibility to ensure that the Work does not modify, disturb or disrupt the relocated utility facilities completed by SCE. Contractor shall meet regularly with the Construction Management Consultant and SCE or SCE's contractor to review the status of SCE's relocation work.

B. City of Ontario (Ontario) Holt/Grove Widening Project Construction Coordination

During the Period of Performance, Ontario will be working on its project in the proximity of Holt and Grove, identified as the "City Grove Project" in the First Amendment to the Ontario-SBCTA Cooperative Agreement, Agreement No. 20-1002422. The City Grove Project includes roadway widening necessary to accommodate Contractor's Work including the center-running stations and other roadway widening improvements. Ontario has agreed that Contractor may demolish any temporary facilities constructed by Ontario's contractor. Ontario and SBCTA have completed a construction coordination plan that will address the sequencing of work, construction limits, durations of specific

elements of the work, and who performs specific elements of the work (“Coordination Plan”), which is attached and incorporated herein as **Appendix-2 to this Special Provision**.

Contractor shall sequence its Work activities in accordance with the Coordination Plan; Contractor shall adhere to the requirements of the Coordination Plan and implement the Coordination Plan on behalf of SBCTA. Contractor will reasonably cooperate with SBCTA, the CMC and Ontario to coordinate and sequence construction activities and modify the Coordination Plan as necessary to progress both projects. Contractor shall meet regularly with CMC and Ontario or Ontario’s contractor to review the Coordination Plan.

C. ROW Acquisition and Encroachment Permits

Certain parcels that are part of the Project right of way (ROW) may not be available for Contractor to begin its Work at issuance of the LNTP or NTP, as applicable, while the property owners complete certain improvements to their property. The anticipated availability of each parcel is identified in the Right of Way Availability Matrix, attached and incorporated herein as **Appendix-3 of this Special Provision**. SBCTA will notify Contractor when each parcel will be available, on a parcel-by-parcel basis. In addition, a number of parcels have specific notification requirements and/or working hours restrictions. These requirements and restrictions are attached and incorporated herein as **Appendix-4 of this Special Provision**. Contractor shall sequence its work activities and plan its schedule to allow for these properties to be available when it begins work in Stage 3 as depicted in the Project Plans. Contractor shall notify SBCTA 14 days in advance of access to property per a Temporary Construction Easement (TCE) or other right. In no event will contractor enter property that it does not have a right to enter.

There are two intersections that fall within Caltrans ROW and require encroachment permits before Contractor can begin its Work. The dates SBCTA anticipates obtaining Caltrans encroachment permits are provided in Appendix 3 of this Special Provision. SBCTA will notify Contractor when the permits are obtained. Contractor shall sequence its work activities and plan its schedule to allow for work to begin at the sites in the Caltrans ROW once the encroachment permits are obtained.

APPENDIX-1 TO SP-28
THIS DOCUMENT IS LOCATED IN THE “DOCUMENTS”
SECTION OF PLANETBIDS.

Third-Party Agreements Matrix
(Copies of these fully executed agreements will be available in the documents section of PlanetBids)

Third-Party	Agreement	Agreement Number
Ontario International Airport Authority	Cooperative Agreement	21-1002697
City of Montclair	Cooperative Agreement	20-1002421
City of Ontario	Cooperative Agreement First Amendment Holt/Grove Construction Coordination Plan (Appendix 2)	20-1002422
City of Pomona	Cooperative Agreement	20-1002420
City of Rancho Cucamonga	Cooperative Agreement	20-1002423
Omnitrans	Cooperative Agreement First Amendment	17-1001638
Southern California Edison (SCE)	Programmatic Agreement	22-1002812
Southern California Edison (SCE)	Utility Relocation Agreements	(not completed)
Southern California Gas (SCG)	Utility Relocation Agreement	(not completed)
Inland Empire Utilities Agency (IEUA)	Utility Relocation Agreement	(not completed)
Monte Vista Water District (MVWD)	Utility Relocation Agreement	(not completed)
Cucamonga Valley Water District (CVWD)	Utility Relocation Agreement	(not completed)

**Technical -2 TO SP-28
Holt Blvd. and Grove Ave. Widening Project Construction
Coordination Plan**

**THIS DOCUMENT IS LOCATED IN THE “DOCUMENTS”
SECTION OF PLANETBIDS.**

APPENDIX-3 TO SP-28
Right of Way Availability Matrix

APN No.'s	Owner Reference	ROW Available
1009-493-11	4480 Holt Blvd. Montclair, LLC-KZMB, LLC	3/29/2023
1010-522-17	Sarinana	3/29/2023
1010-543-01; 1010-543-02; 1010-543-03	Cuccia Family Trust	3/29/2023
1010-543-04, 1010-543-05, 1010-543-06	Topline Automotive, Inc.	3/29/2023
1010-543-07	Rose-In-Bloom, Inc.	3/29/2023
1010-543-09	Linda L. Robinson Living Trust	3/29/2023
1010-543-10, 1010-543-11	Charolet Cesar Family Trust	3/29/2023
1010-543-12	Campio Family Trust	3/29/2023
1010-543-13, 1010-543-14	Juarez Family Revocable Trust	3/29/2023
1010-543-32	Kinnamon-Pickering-Grimes Trust	3/29/2023
1010-552-04, 1010-552-05	Holt Holdings, LLC	3/29/2023
1010-552-06	Munagala	3/29/2023
1010-552-07, 1010-552-37	Jafari	3/29/2023
1010-552-11	Gonzalez	3/29/2023
1010-552-12	Girish and Rekha Solanki Living Trust	3/29/2023
1010-552-13	Girish and Rekha Solanki Living Trust	3/29/2023
1010-552-14, 1010-552-15	Malagon	3/29/2023
1010-552-32, 1010-552-33, 1010-552-34	Juarez Family Revocable Trust	3/29/2023
1010-552-38	Nabhan-Virtue Trust	3/29/2023
1010-611-12	HBL Family, LLC	3/29/2023
1011-052-15	Southeast Statesboro, LLC	3/29/2023

APN No.'s	Owner Reference	ROW Available
1011-111-04	Holt Park Holding, LLC	3/29/2023
1011-111-05	1401 Holt Investments, LLC	3/29/2023
1011-111-18	Astfalk Trust	3/29/2023
1011-111-20	Liang-Lin Family Trust	3/29/2023
1011-111-21	Johnson Family Trust	3/29/2023
1011-111-24	Holt Park Holding, LLC	3/29/2023
1011-121-02	Jauregui	3/29/2023
1011-121-05	Ontario Ice Skating Center, Inc.	3/29/2023
1011-121-13	Hendrickson-Harden	3/29/2023
1011-121-17, 1011-121-18	Pirseh, LLC	3/29/2023
1011-121-22	Bacily	3/29/2023
1011-121-24	Jaber Family Trust	3/29/2023
1011-121-26	The Dewey Group, LP	3/29/2023
1011-121-27	Bux	3/29/2023
1012-071-03	RFA Montclair, LP	3/29/2023
8323-016-021	Han-Pomona Square, LLC	3/29/2023
8323-025-025	14255 Ellsworth Street, LLC	3/29/2023
8326-024-041	Fountain of Love Christian Center, Inc.	3/29/2023
8326-026-029	MSW Pomona, LLC	3/29/2023
8336-022-015	Birch Forestone, LLC	7/10/2023
8337-015-034	Yingchun, LLC	3/29/2023
8337-021-047	Fakhouri	3/29/2023
0110-431-11	Airport Gateway Plaza	3/29/2023
0210-191-29	Ontario H Hotel LLC	3/29/2023
0210-211-33	Starbridge Investment LLC	3/29/2023
0229-012-16	YNS Enterprise No 1 LLC	3/29/2023

APN No.'s	Owner Reference	ROW Available
1010-491-02	Ashwin Paymaster	3/29/2023
1010-491-03	Amir Mahdavi	3/29/2023
1010-491-16	John D. Hagen	3/29/2023
1011-132-07	Paint Bucket Inc	3/29/2023
1011-132-08, 1011-132-09	Duane Yavelak	3/29/2023
1011-132-10, 1011-132-11	Florentino Fernandez	3/29/2023
1011-132-12	Robert William Volm	3/29/2023
1011-141-06	NRP Development Inc.	3/29/2023
1011-141-07	Grace Property Management LLC	3/29/2023
1011-141-11, 1011-141-13, 1011-141-30	William S. Short	3/29/2023
1011-141-16	Hamid Reza DiBadj	3/29/2023
1011-141-32	Kichli LLC	3/29/2023
1011-141-35	Khang Bao Lieu	3/29/2023
1011-141-36	Barbara E. Kaitz	3/29/2023
1048-591-28	Holt San Antonio LLC	3/29/2023
1048-591-29	Stater 108 LLC	3/29/2023
1048-591-30	Holt San Antonio LLC	3/29/2023
1048-591-32	Sunrz 786 Holdings Inc	3/29/2023
1048-604-13	Mack Partners LLC	3/29/2023
1048-604-14	MMOS Inc.	3/29/2023
1048-604-15	AJ1 Development LLC	3/29/2023
1049-011-01	Irving Hage	3/29/2023
1049-011-02	Annette Marie Durrizague	3/29/2023
1049-011-03	Tam Ngoc Nguyen	3/29/2023
1049-011-04	Reina Holding Company LLC	3/29/2023

APN No.'s	Owner Reference	ROW Available
1049-011-05	MJ United Inc.	3/29/2023
1049-012-01	Elsa Amaro	3/29/2023
1049-012-02, 1049-012-24	Evangelos Karpouzis	3/29/2023
1049-021-03, 1049-021-04	Chi Hong Chiang	3/29/2023
1049-021-28	William T. Digle	3/29/2023
1049-021-29	A&C New Place LLC	3/29/2023
1090-531-03	Rancho Mall LLC	7/10/2023
1048-471-14	Viraj Sehgal & Ravi K. Sehgal	3/29/2023
1048-471-15	Calypso Group Investments, LLC	3/29/2023
1048-471-22, 23	Joyful Nations Ministries	3/29/2023
1048-471-24	Pama IV Properties, LP	3/29/2023
1048-481-01	Frida Dwayne Dotson	3/29/2023
1048-481-02	Redgate Partners, LLC	3/29/2023
1048-481-03	Tire Zone, LLC	3/29/2023
1048-481-06	David D. Miller & Denyse Miller	3/29/2023
1048-481-07	Jose G. Jimenez	3/29/2023
1048-481-27	Bhupendrakumar M. Patel & Hansaben B. Patel	3/29/2023
1048-481-28	Maan F. Harb	3/29/2023
1048-481-29	DALI III, LLC	3/29/2023
1048-512-10	Albert Aleman & Bertha Aleman	3/29/2023
1048-512-11	Phat Van Chan & Lai Fan Poon Chan	3/29/2023
1048-512-13	Tae Soo Park & Han Chu Park	3/29/2023
1048-512-15	AREC 8, LLC	3/29/2023
1048-512-16	Yolanda Chavez	3/29/2023
1048-512-17	Salvador Ayala & Maria C. Ayala	3/29/2023

APN No.'s	Owner Reference	ROW Available
1048-512-18	Frank E. Halstead & Maria E. Halstead	3/29/2023
1048-512-19, 20	William Chaing & Youhoung Chaing	3/29/2023
1048-512-28	Lozano-Ortega & Associates, LLC	3/29/2023
1048-522-08	Daniel Olivos & Heddy Olivos	3/29/2023
1048-522-11	I E Investments Group, Inc.	3/29/2023
1048-523-15	Qihua Feng	3/29/2023
1048-523-16	Elias Properties, LLC	3/29/2023
1048-523-17	Manuel V. Iniguez	3/29/2023
1048-524-14, 15, 16	Ronald A. Kipper & Frances A Kipper	3/29/2023
1048-524-17	Elia M. Tawil	3/29/2023
1048-525-16	Barry A. Swerdloff, Ronald S. Swerdloff and Christina Wang	3/29/2023
1048-525-17, 18	Jose Collazo	3/29/2023
1048-525-20	Israel Cisneros	3/29/2023
1048-547-94	MG Ontario Town Square Townhomes L.P.	3/29/2023
1049-091-02	8th St. Rancho, LLC	3/29/2023
1049-091-03	Ayalco, LLC	3/29/2023
1049-093-05	Jalala, Farid; Jahangiri, Makay	3/29/2023
1049-093-06	John D. Roubian II	3/29/2023
1049-093-08	Jalala, Farid; Jahangiri, Makay	3/29/2023
1049-093-10	Gabriel P. Chavez	3/29/2023
0110-061-01	Amazing Grace Clothing, LLC	3/29/2023
0110-061-04, 18	Salhab, Fayek J. and Shifaa G.	3/29/2023
0110-061-23	Pama IV Properties, LP	3/29/2023
0110-071-02	Shih, Sen Mou and Shih, Chi Wei-Cho	3/29/2023
0110-071-06, 07	Qu's Holding LLC	3/29/2023

APN No.'s	Owner Reference	ROW Available
0110-072-08, 09	415 Vineyard LLC	6/30/2023
0110-072-10, 11	Grabowski, Patrick F. and Grabowski, Janis	3/29/2023
0110-072-16	7 Summit Properties 2, LLC	3/29/2023
0110-072-25	The United States of America	4/29/2023
0110-081-06	Combee, Joe Howard and Combee, Cheryl Ellen	3/29/2023
0110-081-07	Ditommaso, Anthony, Bruno, Jeanne P., Brost, Deanna P., Ditommaso, Christopher F., Bruno, Franklin J., and Ditommaso, Beverly	3/29/2023
0110-081-08	Holt Blvd., LLC	3/29/2023
0110-081-13	Holt Blvd LLC	3/29/2023
0110-092-17	Poseidon Ontario Airport Plaza, LLC	3/29/2023
0110-101-01 and 0110-111-09, 10	Rowlands Properties	3/29/2023
0110-101-13	Ontario CNG Property LLC	3/29/2023
0110-111-01	Matlock, Thomas G. and Matlock, Judith L.	3/29/2023
0110-111-06, 07, 08	Goodin, Ron J.	3/29/2023
0110-111-13, 14	HOLT LPIV 3 LLC	6/30/2023
0110-121-03	Town Square M Properties, LLC	3/29/2023
0110-121-04, 05	M & M Development and Investment Group	3/29/2023
0110-121-08, 09	The Beacon Group, Inc.	3/29/2023
0110-121-10	USPF Holt LP	3/29/2023
0110-131-06, 07, 08	Fawzi Armada, Michael	3/29/2023
0110-131-09	Jauregui, Francisco	3/29/2023
0110-131-13	La Commare, James and Josephine Tr	3/29/2023
0110-131-25	Abma, John Theodore Jr.	3/29/2023

APN No.'s	Owner Reference	ROW Available
0110-131-28	Humphrey, William J. and Humphrey, Beverly J.	3/29/2023
1049-101-04	Beachwood Properties	3/29/2023
1049-101-08	Lopez, Juan Carlos Marin and Hernandez, Isabel Cristina Garcia	3/29/2023
1049-101-10	Arustemi Family Revocable Living Trust	3/29/2023
1049-101-38	Chang, Aaron and Chang, Ruth	3/29/2023
1049-101-39	Sea Partners, LLC	3/29/2023
1049-101-40, 1049-131-02, 03	Golden State Alliance, LLC	3/29/2023
1049-131-04	Newbao, LLC	3/29/2023
1049-131-06	Tremazi, Muhammad S. and Tremazi, Iqbal M.	3/29/2023
1049-131-08	EJT Management LLC	3/29/2023
1049-131-13, 14	Holt LPIV 8 LLC	6/30/2023
1049-131-15	1044 E Holt LLC	3/29/2023
1049-131-16	TIP Ontario LLC	3/29/2023
1049-131-18, 19	Group II Azusa Properties, LTD	3/29/2023
1049-131-20	1010 Holt, LLC	3/29/2023
1048-512-29	Jaswant Kaur Bir	10/1/2023
1048-522-09	Trupreneur Investment, LLC	10/1/2023
1048-522-10	Daru Property Management LLC	10/1/2023
1049-063-01	Susan NA	10/1/2023
1049-063-02	City of Ontario	10/1/2023
1049-063-03, 04	Alicia Rojas	10/1/2023
1049-063-05	Joao Ricardo Carvalho & Lisa Castro Carvalho	10/1/2023
1049-065-11	B & G Plaza	10/1/2023

APN No.'s	Owner Reference	ROW Available
1049-066-02	Phuoc Banh & Ky Banh	10/1/2023
1049-091-01	Hee Chang Kim & Moung Sook Kim	10/1/2023
1049-091-04	Judy Almaraz	10/1/2023
1049-093-01	Muhammad A. Malik	10/1/2023
1049-093-02	Jose Esparza	10/1/2023
1049-093-03, 04, 06	John Roubian	10/1/2023
1049-093-07, 09	Angelica Rodriguez	10/1/2023
1049-094-01, 02	Marlena Belichsky	10/1/2023
1049-094-04, 14	Deborah Y. Cagle	10/1/2023
1049-101-05	Enriquez, Guy	10/1/2023
1049-101-06, 07	Kim, Henry C.	10/1/2023
1049-101-09	Leon, Lino	10/1/2023
1049-101-11	Griffith, Roger Alan	10/1/2023
1049-101-12, 13, 14, 15, 16, 18	Ledesma, Daniel E. and Ledesma, Raul Enriquez	10/1/2023
1049-131-05	Yoo, Jun Son	10/1/2023
0238-014-36, 0238-014-40, 0238-014-42	Ontario Mills Limited Partnership	10/1/2023

Location	Permit Type	Obtained By
Holt Blvd. and Euclid Ave. Intersection	Caltrans Encroachment Permit	03/31/2024
Archibald Ave. and I-10 ramps	Caltrans Encroachment Permit	03/31/2024

APPENDIX-4 TO SP-28
ROW Access Special Requirements

Assessor's Parcel Number	Property Owner	Site Address	Mailing Address	Special Notice or Working Hours
1011-111-18	Astfalk Trust	1363 W. Holt Blvd., Ontario	211 W. Caroline Court, Ontario, CA 91762	Provide 60-day notice before start of construction.
8337-021-047	Fakhouri	530 E. Holt Ave., Pomona	530 E. Holt Ave., Pomona CA 91767	Construction within TCE shall be done during non-operating hours, 7:00 pm to 7:00 am.
1011-111-21	Johnson Family Trust	1511 W. Holt Blvd, Ontario, CA 91762	5703 E. Rocking Horse Way, Orange, CA 92869	No complete closures of either driveway to the property is allowed from 7 am to 7 pm. Provide a 24-hour Project point of contact at least 10 days prior to commencement of TCE.
1010-543-01 through 03	Cuccia	1206 W. Holt Blvd, Ontario, CA 91762	1206 W. Holt Blvd, Ontario, CA 91762	Contractor can only perform work either before 10am or after 9:30pm
1010-552-17	Sarinana	1156 W. Holt Blvd, Ontario, CA 91762	15377 Thistle Street., Fontana, CA 92336	Contractor to provide 7-day notice before start of construction. Contractor to conduct driveway construction between 5:30 pm and 8:00 am.

SP-29 CONTRACTOR'S WARRANTY

CONTRACTOR warrants that all Work completed under the Contract, including all materials and workmanship furnished by CONTRACTOR and subcontractors shall comply with the Contract, and that the work shall be free from defects or failures for the period of twenty-four (24) months following Project Close Out. CONTRACTOR does not warrant the Work against failures caused by SBCTA's routine maintenance operations.

If and to the extent CONTRACTOR obtains general or limited warranties from any subcontractor with respect to design, materials, workmanship, construction, equipment, tools, supplies, software, or services, CONTRACTOR also shall cause such warranty to be expressly extended to SBCTA; provided that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to SBCTA using commercially reasonable efforts.

CONTRACTOR guarantees that after receipt of notice from SBCTA CONTRACTOR shall perform the warranty work as specified in the notice including all necessary incidental work to complete the action and restore the complete facility, and damage to adjoining structures caused by failure of the warranted work, including but not limited to removal, engineering, material procurement, reinstallation, or replacement at CONTRACTOR's cost and expense. SBCTA's remedies under this warranty are not exclusive but are in addition to any other remedies provided by this Contract or law. The additional obligations undertaken by CONTRACTOR to provide this warranty for the work and to perform in accordance herewith shall be secured by a Performance and Payment Bond provided by CONTRACTOR in a form furnished by SBCTA, and said bonds to remain in full force and effect for the duration of the warranty period.