



INVITATION FOR BIDS (IFB) 23-1002922

FOR

**ARROW MAINTENANCE FACILITY HYDROGEN FUEL UPGRADE: AMF
RETROFIT**

KEY IFB DATES

IFB Issue Date:	Wednesday, September 6, 2023
Pre-Bid Conference Date:	Tuesday, September 12, 2023 at 1:00 p.m.
Site Visit:	Monday, September 18, 2023 at 9:00 a.m. – 11:00 a.m.
Questions Submittal Deadline:	Thursday, September 21, 2023 at 4:00 p.m.
Bid Due Date:	Tuesday, October 10, 2023 at 2:00 p.m.
Contract Award:	November 2023
Notice To Proceed Date:	November 2023



September 6, 2023

**SUBJECT: NOTICE INVITING SEALED BIDS
INVITATION FOR BIDS (IFB) 23-1002922
“Arrow Maintenance Facility Hydrogen Fuel Upgrade: AMF Retrofit”
(hereinafter referred to as “Project”)**

The San Bernardino County Transportation Authority (“SBCTA”) invites sealed bids for construction of the **Arrow Maintenance Facility Hydrogen Fuel Upgrade: AMF Retrofit Project**, hereinafter referred to as “Project”. The engineer’s estimate for this project is approximately **Six Million, Eight Hundred Eighty-One Thousand, Seven Hundred Eighty-One Dollars (\$6,881,781.00)**.

The IFB, including the plans, special provisions, and bid forms for bidding this project, 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 **November 2023**. The IFB and IFB schedule updates and addenda, together with other important information, are available on SBCTA’s website at www.gosbcta.com. Firms are requested to check the website 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 website. Please note that SBCTA will not be responsible for mailing any addenda, schedule updates, or other information to any firm.

A Pre-Bid Conference is scheduled for **Tuesday, September 12, 2023 at 1:00 p.m.**, via Microsoft Teams. Attendance at this 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. A project site and building tour will be conducted on **Monday, September 18, 2023 at 9:00 a.m. – 11:00 a.m.** The site tour sign-up process will be discussed in detail at the pre-bid meeting.

Topic: IFB23-1002922 Pre-Bid Meeting Arrow Maintenance Facility Hydrogen Fuel Upgrade: AMF Retrofit

Time: Tuesday, September 12, 2023 at 1:00 PM Pacific Time

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 238 419 528 337

Passcode: CgfjiQ

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Or call in (audio only)

[+1 469-217-7806,702963661#](tel:+14692177806702963661) United States, Dallas

Phone Conference ID: 702 963 661#

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Site Visit:

Location: 958 W 3rd St, San Bernardino, CA 92410

Date: Monday, September 18, 2023

Time: 9:00 a.m. – 11:00 a.m PST

To RSVP for the Site Visit, fill out the Waiver of Liability and Hold Harmless Agreement located in the documents tab of the solicitation in PlanetBids. All firms will be limited to 2 key personnel. Personal Protective Equipment (PPE) must be worn at all times during the site visit.

All questions and/or approved equal requests related to this IFB must be submitted via the Vendor Portal (Planet Bids) located on SBCTA's website: at www.gosbcta.com, hover over "Doing Business", then select "Vendor Portal". to SBCTA no later than **Thursday, September 21, 2023 at 4:00 p.m.**

Questions and approved equal requests that are received after the deadline specified herein may or may not be responded to at the sole discretion of SBCTA, and the responses will be posted on the 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 on or before **Tuesday, October 10, 2023 at 2:00 p.m.** 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 will have a series of tab and 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 give any further consideration.

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 (PlanetBids) on **Tuesday, October 10, 2023 at 2:00 p.m.**

General description of work:

SBCTA, in partnership with the Southern California Regional Rail Authority ("SCRRA"), presents this Invitation for Bids (IFB) to prospective bidders interested in undertaking the delivery of the Arrow Maintenance Facility Hydrogen Fuel Upgrade: AMF Retrofit ("AMF Retrofit" or "Project") in the City of San Bernardino. The goal of the AMF Retrofit is to modify the existing Arrow Maintenance Facility to support the testing and operations of a zero-emission multiple unit

(ZEMU) rail vehicle. The ZEMU vehicle is a hydrogen fuel cell and battery hybrid multiple unit rail vehicle and will be integrated into SBCTA's Arrow service to reduce overall service emissions. SBCTA is procuring construction services for the AMF Retrofit, to safely maintain the ZEMU vehicle. Scope of the retrofit includes, but is not limited to, ventilation, electrical and fire suppression system upgrades, hydrogen gas and flame detection, a new fire pump, charging facilities, added storage, a posted rail pit, and architectural, structural, civil and utility modifications as required.

The Construction Management Consultant will administer the Contract on behalf of SBCTA, including reviews of all Contractor design submittals, inspections, and provision of oversight of the Contractor's construction operations and work product.

The awarded contractor shall possess a General Engineering Contractor (Class A) or General Building Contractor (Class B) 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 the State of California Public Contract Code section 20103.5.

As of January 1, 2015, all contractors and subcontractors bidding and performing work on Public Works 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.

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 Section 1720, 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 7029.1 of the Business and Professions Code or by Sections 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Labor Code 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.

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

INVITATION FOR BIDS 23-1002922

FOR

**ARROW MAINTENANCE FACILITY HYDROGEN FUEL UPGRADE: AMF
RETROFIT**

I. INSTRUCTION TO BIDDERS

The San Bernardino County Transportation Authority (“SBCTA”) is soliciting bids from qualified firms (“firms” or “bidders”), to provide **Construction Services** for the **Arrow Maintenance Facility Hydrogen Fuel Upgrade: AMF Retrofit**.

A. IFB DOCUMENTS

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. CONTACT INFORMATION

All inquiries, contacts or questions related to this IFB shall be directed to:

**San Bernardino County Transportation Authority
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715
(909) 884-8276
Attention: Satasia Brown - Procurement Analyst
sbrown@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 for assistance in preparing a response to the IFB. Violation of this prohibition may result in disqualification of the bidder.

C. PRE-BID CONFERENCE/SITE VISIT

A Pre-Bid Conference is scheduled for **Tuesday, September 12, 2023 at 1:00 p.m.**, via Microsoft Teams. Interested firms are strongly encouraged to attend the Pre-Bid Conference, and project site and building tour, 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, site and building tour. A project site and building tour will be conducted on **Monday, September 18, 2023 at 9:00 a.m. – 11:00 a.m.** The site tour sign-up process will be discussed at the pre-bid meeting.

Topic: IFB23-1002922 Pre-Bid Meeting Arrow Maintenance Facility Hydrogen Fuel Upgrade: AMF Retrofit

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Site Visit:

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Date: Monday, September 18, 2023

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To RSVP for the Site Visit, fill out the Waiver of Liability and Hold Harmless Agreement located in the documents tab of the solicitation in PlanetBids. All firms will be limited to 2 key personnel. Personal Protective Equipment (PPE) must be worn at all times during the site visit.

D. 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 types of materials to be furnished; and character, quality, and quantity of surface and subsurface materials or obstacles.

E. 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 submitted electronically via the vendor portal, and must be received by SBCTA **no later than Thursday, September 21, 2023 at 4:00 p.m.** Questions received by the date and time identified in this IFB and SBCTA's responses will be posted on SBCTA's website at www.gosbcta.com, click "BIDS & RFPS".

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.

F. ADDENDA

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. Firms shall acknowledge receipt of any addenda in their bid.

G. 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.

H. PRE-CONTRACTUAL EXPENSES

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

I. 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.

J. PREVAILING WAGES

The project requires compliance with California Labor Code Sections 1770 et seq. All contractors shall be bound by federal and California law regarding 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 to bidders by SBCTA in an addendum to this IFB, which 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 www.dir.ca.gov/DLSR/statistics_research.html.

Effective June 20, 2014, the Department of Industrial Relations (DIR) made changes to the administration and enforcement of prevailing wage requirements, including a contractors 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 dir.ca.gov.

K. NON-DISCRIMINATION

The contract, if awarded, is subject to the California Fair Employment and Housing Act, Government Code Sections 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 in the performance of this contract. 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 SBCTA deems appropriate.

L. 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.

M. LICENSING REQUIREMENTS

The contractor shall possess a General Engineering Contractor (Class A) or General Building Contractor (Class B) 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 the State of California Public Contract Code section 20103.5.

N. INSURANCE REQUIREMENTS (See Insurance 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 of and compliance with the insurance requirements, without exceptions.

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. Bid Alternate – SCE Power: The current design and base Contract scope of work assumes that the existing transformer and power feed by Southern California Edison (SCE) is sufficient for the AMF Retrofit Project. The base Contract scope of work utilizing the existing transformer is described by Drawing E-1011 and related drawings. There is a possibility that SCE may later decide that a larger transformer and revised power feed is necessary. The Bid Alternate scope of work related to SCE providing a new larger transformer is described by Drawing E-1011-ALT. The Bidder shall provide a price to implement the work required to accommodate the installation of a new transformer at the project site by SCE in lieu of utilizing the existing transformer and power feed. SBCTA has the right to order the acceptance of the Bid Alternate at any time from Contract Award until 120 days after the Notice to Proceed. The Bid Alternate price shall be entered on the Bid Form at the location below the TOTAL BID PRICE line. The Bid Alternate price shall include all work necessary to implement the revised scope of work and shall reflect all direct and indirect costs, overhead and profit related to the revised scope of work in addition to the TOTAL BID PRICE.
- C. Bids must be submitted electronically through SBCTA’s Vendor Portal: PlanetBids on **Tuesday, October 10, 2023 at or before 2:00 p.m.** To bid for this project, firms must be registered with SBCTA’s Vendor Portal.
- D. 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.
- E. 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.
- F. Bids will be electronically unlocked, and the results will be made available to view through PlanetBids on **Tuesday, October 10, 2023 at 2:00 p.m.**

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, and 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 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 shall not be withdrawn for a period of sixty (60) 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 a 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, 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 their bid. The successful bidder shall perform work equivalent to at least twenty percent (20%) 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

Though no DBE goal is set for this Project, SBCTA encourages participation from small and Disadvantaged Business Enterprise (DBE). Firms interested in SBCTA’s DBE program may contact Shaneka Morris at (909) 884-8276.

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 Certification w/ Disclosure Forms, 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 <http://www.gosbcta.com>: click on "BIDS & RFPS," then on the "Contracting" page, click on "Contractor Resources" 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.

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. Bidder's Certificate of Compliance – Worker's Compensation Insurance
6. Public Contract Code section 20101 Questionnaire
7. Public Contract Code section 10285.1 Statement
8. Certificate of Compliance with Insurance Requirements
Contractor Questionnaire
9. Iran Contracting Act of 2010 Certification Form

FORMS THAT MUST BE SUBMITTED WITHIN TEN (10) BUSINESS DAYS 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

BID FORM

Arrow Maintenance Facility Hydrogen Fuel Upgrade: AMF Retrofit

CONTRACT NO. 23-1002922

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 Bid, 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 annexed hereto, and also the Project Technical Specifications Section 01 11 13, Paragraph 1.3, the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished, and the General Prevailing Wage Rates most current edition at the date of the bid opening.

Accompanying this bid is a "Cashier's Check", "Certified Check", or "Bidder's 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 SBCTA 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 23-1002922

The undersigned hereby acknowledges the following:

1. The Project Plans dated **August 21, 2023**, Invitation for Bid, and Special Provisions issued on **September 6, 2023**, for the work to be done are entitled:

Arrow Maintenance Facility Hydrogen Fuel Upgrade: AMF Retrofit

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): insert number(s) _____.

2. The bidder has thoroughly examined and is familiar with the work required by and the documents contained within 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:

IFB 23-1002922
Arrow Maintenance Facility Hydrogen Fuel Upgrade: AMF Retrofit
Bid

ITEM NO.	DESCRIPTION	UNIT	QTY	TOTAL COST
1	Mobilization, Temporary Facilities, Demobilization	LS		
2	Survey and Staking	LS		
3	Contractor Quality Control & Testing	LS		
4	Contract Close-out Tasks	LS		
5	Permits	Allowance		\$45,000
6	Removal of Hazardous or Contaminated Materials	Allowance		\$200,000
	Sitework			
7	Sitework - Demolition and Removals	LS		
8	Sitework - Sanitary Sewer	LS		
9	Sitework - Water	LS		
10	Sitework - Stormwater	LS		
11	Sitework - Underground Electrical	LS		
12	Sitework - Generator, ATS, Docking Station	LS		
13	Sitework - Main Switchboard	LS		
14	Sitework - Modular Building	LS		
15	Sitework - All Other Improvements	LS		
	Fire Pump Building (FPB)			
16	FPB - Concrete	LS		
17	FPB - Masonry	LS		
18	FPB - Roofing	LS		
19	FPB - Mechanical	LS		
20	FPB - Fire Protection	LS		
21	FPB - Electrical	LS		
22	FPB - Architectural	LS		
	AMF Building (AMFB)			
23	AMFB - Structural Steel and Miscellaneous Metals	LS		
24	AMFB - Architectural	LS		
25	AMFB - Mechanical	LS		
26	AMFB - Fire Protection	LS		
27	AMFB - Hydrogen & Flame Detection System	LS		
28	AMFB - Electrical - Replace Existing in Classified Area	LS		
29	AMFB - Electrical - New Subpanels & Circuits	LS		

IFB 23-1002922
Arrow Maintenance Facility Hydrogen Fuel Upgrade: AMF Retrofit
Bid

ITEM NO.	DESCRIPTION	UNIT	QTY	TOTAL COST
30	AMFB - Electrical - Lighting	LS		
31	AMFB - Electrical - ZEMU Charging Stations	LS		
32	AMFB - Electrical Cut-over - Existing to New Systems	LS		
	Systems Integration - Transition Existing to New Systems			
33	Equipment & System Start-up	LS		
34	Mechanical & Electrical Systems Integration	LS		
35	Equipment & Systems Commissioning	LS		
	TOTAL BID PRICE			
36	Bid Alternate – SCE Power: Added cost to revise the scope of work related to SCE providing a new larger transformer and power feed described by Drawing E-1011-ALT			

SBCTA

BID FORM 23-1002922 (Continued)

9. Bidder understands that SBCTA reserves the right to reject the bid, and that the bid shall remain open and not withdrawn for a period of sixty (60) 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 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. The Bidder shall comply 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. In addition, 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. The contractor certifies that they will comply with all requirements of the Act.
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 has identified the names of all principals in the Contractor Questionnaire.

BID FORM 23-1002922
(Continued)

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

- 16. 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, and the Contractor Questionnaire are true and correct, and that the Bidder has complied with the requirements of section 11102 of the Fair Employment and Housing Council Regulations (California Code of Regulations Title 2, Division 4, Chapter 5). 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 California Public Contract Code section 7106 is true and correct.

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

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

Corporation/LLC/partnership 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, the legal name of the corporation shall be set forth above with the signature of the officer authorized to sign contracts on behalf of the corporation. If bidder is a partnership, the true name of the firm shall be set forth above together with the signature of the partner(s) authorized to sign contracts on behalf of the partnership; and if a bidder is an individual, his signature shall be placed above. If the bidder is a limited liability company, the legal name of the LLC shall be set forth above with the signature of the officer authorized to sign contracts on behalf of the limited liability company. If signature is by an agent, 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.

CERTIFICATE OF ACKNOWLEDGMENT
BIDDERS BOND
CONTRACT 23-1002922

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, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to this instrument as the attorney-in-fact of, and acknowledged to me that he/she/they subscribed the name of the said company thereto as surety, and his/her own name as attorney-in-fact.

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 to 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; 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 thereof, 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 procurement@gosbcta.com

Subcontractor:

Bid item number, description and percentage of bid item

Bid item number, and description of bid item

_____ % 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

**BIDDERS 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 require 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: _____

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 bidder cannot so certify, explain fully in the space below:

**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):

1. Contractor/Consultant has provided a copy of the insurance requirements contained in the San Bernardino County Transportation Authority (SBCTA) Contract to their agent or broker to confirm the ability to meet requirements.

AND

2. Contractor certifies that the company or individual is fully prepared to secure the necessary insurance coverage and limits as detailed in the SBCTA Contract and comply with all insurance requirements.

OR

3. 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 to Award.

Vendor/Firm Information:

Company/Individual Name

Print Name of Authorized Official

Signature of Authorized Official

Date Signed

Address: _____

City: _____

State: _____ Zip Code: _____

Phone No.

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 PROPOSER/BIDDER IDENTIFIED BELOW CERTIFIES AS FOLLOWS (*REQUIRED*: SELECT ONE OF THE FOLLOWING):

1. In accordance with Public Contract Code Section 2204(a), Proposer/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.
2. In accordance with Public Contract Code Section 2204(b), Proposer/Bidder is authorized to submit this bid or proposal pursuant to one of the following (*REQUIRED*: SELECT ONE OF THE FOLLOWING):
 - a. FOR USE ONLY BY PROPOSERS/BIDDERS GRANTED SPECIFIC PERMISSION BY SBCTA TO SUBMIT A PROPOSAL OR BID: Proposer/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) Proposer/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;
 - b. FINANCIAL INSTITUTIONS ONLY: Proposer/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).

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

PROPOSER OR BIDDER INFORMATION:

Company Name

Address

City

State

Zip Code

Authorized Representative: Name

Title

Authorized Representative: Signature

Date

Phone

Email Address

ATTACHMENT “A” CONTRACT

CONTRACT 23-1002922

BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

FOR

Arrow Maintenance Facility Hydrogen Fuel Upgrade: AMF Retrofit 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 modification to the existing Arrow Maintenance Facility (AMF) to safely operate and maintain a hydrogen-battery hybrid rail vehicle ; and

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

WHEREAS, CONTRACTOR has certified that they have 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 Contract Articles; Invitation For Bids 23-1002922 (IFB) dated **September 6, 2023**; bid dated _____; the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished; Project Plans and Specifications dated **August 21, 2023** ; Addenda Nos. (enter number); Special Provisions issued **September 6, 2023** and Performance and Payment Bonds.

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 10 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 30 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 sub-contractors.

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 sum of _____ (\$ _____), including without limitation any compensation due for unit price work, which shall be calculated as the actual number of such units performed multiplied by the unit price, 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 Bid Schedule 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 SBCTA and 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.

ENTER APPROVED BID ITEMS LIST
FROM WINNING BIDDER.

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, as required by the Notice to Bidders and Special Provisions, all permits required throughout the duration of the Project.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

CONTRACTOR shall provide SBCTA and its authorized representatives or agents 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, its representatives and agents to reproduce any materials as reasonably necessary.

ARTICLE 9. PERIOD OF PERFORMANCE

CONTRACTOR agrees to achieve Substantial Completion of the Work within 430 calendar days after the effective date of the Notice to Proceed and agrees to achieve Final Completion, including all work and Project Closeout tasks, within 490 calendar days after the effective date of the full NTP. Refer to Specifications Section 01 31 99, Period of Performance, for additional requirements related to the Project Schedule and the Contract Period of Performance.

9.1 Limited Notice to Proceed:

SBCTA will employ a two-step Notice to Proceed process. As a condition precedent to the issuance of the Limited Notice to Proceed (LNTP), the CONTRACTOR shall furnish the Performance Bond, Payment Bond, and the signed Agreement. The CONTRACTOR is not authorized to perform any other work until the CONTRACTOR has received the Limited Notice to Proceed from the SBCTA. Should the CONTRACTOR begin Work in advance of receiving the Limited Notice to Proceed, such Work shall be considered as having been done at the CONTRACTOR's own risk and expense. The Limited Notice to Proceed will constitute a notice to proceed with specified Work tasks and deliverables.

9.2 Notice to Proceed:

SBCTA will not issue the Notice to Proceed until all LNTP submission requirements and tasks, specified in more detail in Specification Section 01 31 99, are satisfactorily met by the CONTRACTOR. The NTP will permit the CONTRACTOR to commence construction activities and perform other work tasks at the project site.

SBCTA will provide written notice to the CONTRACTOR establishing the First Charged Day to be no earlier than sixty (60) days after the LNTP, and at its sole discretion, the SBCTA may establish the First Charged Day to be up to one hundred twenty (120) days after the LNTP. The CONTRACTOR shall not make any claim for additional costs or time if SBCTA exercises its right to postpone the issuance of the NTP beyond 60 days after LNTP.

SBCTA will notify the CONTRACTOR in writing a minimum of seven (7) days prior to SBCTA's readiness to establish the date of the First Charged Day. The calculated Substantial Completion date shall be identified in SBCTA's Notice to the CONTRACTOR which establishes the date of the First Charged Day.

Any delay to the issuance of the NTP caused by the CONTRACTOR's failure to satisfy the pre-NTP requirements within sixty (60) days after the LNTP shall be deemed to be a CONTRACTOR-caused delay. The SBCTA has the right to establish the First Charged Day to be as early as sixty (60) days after the LNTP, regardless of whether the pre-NTP requirements have been satisfactorily met by the CONTRACTOR, or not.

9.3 Substantial Completion:

CONTRACTOR shall complete all work necessary to achieve Substantial Completion as described in Section 01 77 00, Substantial Completion, within the number of days indicated above.

9.4 Final Completion:

CONTRACTOR shall complete all work necessary to achieve Final Completion as described in Section 01 77 00, Substantial Completion, and Section 01 77 19, Project Closeout, within sixty (60) calendar days after the Substantial Completion date.

9.5 Milestone 1 Completion:

Intermediate Milestone 1 is the completion of the work necessary to provide electrical power and communication connections to the Hydrogen Fueling Station site at the time when power is needed to energize the Hydrogen Fueling Station. CONTRACTOR shall complete all work necessary to achieve Milestone 1 within eighty (80) calendar days after NTP.

ARTICLE 10. NONDISCRIMINATION/ EQUAL EMPLOYMENT OPPORTUNITY

10.1 CONTRACTOR agrees to comply with the Equal Employment Opportunity (EEO) provisions of this Article.

10.1.1 CONTRACTOR will work with SBCTA in carrying out EEO obligations and in SBCTA's review of his/her activities under the Contract.

10.1.2 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."

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

10.3 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:

10.3.1 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.

10.3.2 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.

10.3.3 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.

10.3.4 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.

10.3.5 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.

10.4 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.

10.4.1 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.

10.4.2 In the event CONTRACTOR has a valid bargaining agreement providing for exclusive hiring hall referrals, it 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.)

10.4.3 CONTRACTOR will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

10.5 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:

10.5.1 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.

10.5.2 CONTRACTOR will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

10.5.3 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.

10.5.4 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.

10.6 Training and Promotion: CONTRACTOR will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

10.6.1 Consistent with CONTRACTOR's work force 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.

10.6.2 CONTRACTOR will advise employees and applicants for employment of available training programs and entrance requirements for each.

10.6.3 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.

10.7 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:

10.7.1 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.

10.7.2 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.

10.7.3 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.

10.7.4 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 these

obligations, such CONTRACTOR shall immediately notify SBCTA.

10.8 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 (DBE), 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 best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. CONTRACTOR shall obtain lists of DBE construction firms from SBCTA. CONTRACTOR will use his best efforts to ensure subcontractor compliance with their EEO obligations.

10.9 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; and the progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

10.9.1 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. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, CONTRACTOR will be required to collect and report training data.

ARTICLE 11. 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 to 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, conflict of interest issues as soon as they are known to CONTRACTOR. CONTRACTOR agrees that CONTRACTOR and its staff shall comply with SBCTA's Conflict of Interest Policy, No. 10102

ARTICLE 12. 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 13. PROPRIETARY RIGHTS/CONFIDENTIALITY

- 13.1 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.
- 13.2 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.
- 13.3 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, or (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.
- 13.4 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.
- 13.5 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.
- 13.6 Any SBCTA materials to which the CONTRACTOR or its agents has access to or materials prepared by the CONTRACTOR during the term of this Contract shall be held in confidence by the CONTRACTOR, who shall exercise all reasonable precautions to prevent disclosure of confidential information to anyone except as authorized by SBCTA. CONTRACTOR shall not release any reports, information of promotional materials or allow for the use of any photos of the project for any purposes without prior written approval from SBCTA. CONTRACTOR, its employees, agents and subconsultants 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.

ARTICLE 14. TERMINATION

14.1 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.

14.1.1 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.

14.1.2 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.

14.1.3 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.

14.2 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.

14.2.1 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.

14.3 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 15. 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 16. 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.

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 17. INSURANCE

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 the 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:

17.1 Commercial General Liability Insurance:

- CONTRACTOR shall maintain commercial general liability (CGL) insurance (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability of not less than **\$5,000,000 each occurrence**.
- The policy shall, at a minimum, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including

coverage to the maximum extent possible for the indemnifications in this Contract), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy(ies), and products and completed operations.

- \$5,000,000 per occurrence limit for property damage or bodily injury
 - \$1,000,000 per occurrence limit for personal injury and advertising injury
 - \$5,000,000 per occurrence limits for products/completed operations coverage (ISO Form 20 37 10 01) if SBCTA's Risk Manager determines it is in SBCTA's best interests to require such coverage,
- If a general aggregate applies, it shall apply separately to this project/location. The project name must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03 or CG 2504).
 - Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.
 - 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

All subcontractors' and sub-subcontractors' deductibles or self-insured retentions must be acceptable to SBCTA's Risk Manager.

17.2 Umbrella/Excess CGL Insurance:

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.
- The umbrella or excess policy must also extend coverage over the automobile policy if it is to be used in combination with the primary automobile policy to meet the total insurance requirement limits.

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

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

- A total limit of liability of not less than **\$5,000,000** 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 subparagraph 4 (Umbrella/Excess CGL) of Section A of this Article.
- Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the CONTRACTOR services.
 - Combined Bodily Injury and Property Damage Liability insurance

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

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

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

Such policies shall contain a waiver of subrogation 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 18 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.

17.5 **Cyber Liability Insurance:** appropriate to the CONTRACTOR's profession and work hereunder, with limits not less than \$1,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the CONTRACTOR in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of SBCTA in the care, custody, or control of the CONTRACTOR. If not covered under the CONTRACTOR's liability policy, such "property" coverage of SBCTA may be endorsed onto the CONTRACTOR's Cyber Liability Policy as covered property as follows:

Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of SBCTA that will be in the care, custody, or control of CONTRACTOR.

17.6 Professional Liability:

- A limit of liability not less than \$3,000,000 per claim
- An annual aggregate limit of not less than \$6,000,000
- Coverage shall be appropriate for the CONTRACTOR'S profession and provided services to include coverage for errors and omissions arising out of the CONTRACTOR'S professional services, or services of any person employed by the CONTRACTOR, or any person for whose acts, errors, mistakes or omissions the CONTRACTOR may be legally liable.
- If Coverage is on a claims made basis:
 - Policy shall contain a retroactive date for coverage of prior acts, which date will be prior to the date the CONTRACTOR begins to perform Work under this Contract.
 - CONTRACTOR shall secure and maintain "tail" coverage for a minimum of three (3) years after Contract completion.

17.7 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 18 from any and all claims, losses and damages caused by fire or other perils covered by the Builders Risk "Special Form Cause of Loss" insurance. There shall be no deductible or self-insured retention exceeding

\$10,000.00 per loss, other than earthquake or flood which may have deductible or self-insured retentions not exceeding \$100,000.00. The policy may have sub-limits not less than the following:

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

17.8 Contractor's Pollution Liability Insurance: The policy must include the following:

- \$2,000,000 per claim or occurrence limits/\$4,000,000 in the aggregate
- 1. If the services involve mold identification / remediation, the policy shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.
- If the services involve lead-based paint or asbestos identification/remediation, the policy shall not contain lead-based paint or asbestos exclusions.

17.9 Railroad Protective Liability Insurance (RRPL):

There are two or more active rail owners/operators in close proximity to the location of the work under this contract. BNSF and Metrolink may require RRPL insurance throughout the term on this agreement. Proposers should contact both railroad operators and satisfy themselves of the requirements (if any) for a right of entry permit and the insurance requirements.

Insurance Services Office Form Railroad Protective Liability, AAR-AASHTO (ISO/RIMA), in the name of the 3rd party railroad(s) with respect to the operations they or any of their subcontractors perform on the Property. Minimum Limits: **\$2 million per occurrence** combined single limit, for coverage and for losses arising out of injury to or death of all persons and for physical loss or damage to or destruction of Property, including the loss of use thereof. A **\$6 million annual aggregate** shall apply. If providing coverage on the London claims- made form, the following provisions shall apply:

- The limits of liability shall be not less than \$3 million per occurrence, combined single limit. A \$9 million aggregate may apply.
- Declarations item 6, extended claims made date, shall allow an extended claims made period no shorter than the length of the original policy period plus one year.
- If equivalent or better, wording is not contained in the policy form, the following endorsement must be included:
 - It is agreed that "physical damage to Property" means direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbed, catenaries, signals, bridges or buildings.

In cases of low hazard activity and insignificant risk to rail facilities, and if the exposure to the track is physically separated by a building, floor or a continuous fence (no thoroughfares) and the employees of the Contractor are explicitly notified, trained, and supervised such that they are not permitted to have any contact with the track or its related improvements, the Railroad Protective Liability Insurance requirement may be waived by SBCTA, or its designated representative, in SBCTA's sole and absolute discretion, where SBCTA's agreements and obligations with rail operators allow it.

17.8 General Provisions

- 17.8.1 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.
- 17.8.2 Additional Insurance Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, shall be endorsed by ISO Form CG 20 10 11 85, or if not available, then ISO Form CG 20 38, to name San Bernardino County Transportation Authority, Southern California Regional Rail Authority (operating as Metrolink) and their officers, directors, members, employees, agents and volunteers, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for the Additional Insureds to vicarious liability but shall allow coverage for SBCTA to the full extent provided by the policy.
- 17.8.3 Proof of Coverage. Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including declarations pages of each policy, certificates of insurance and the required additional insured endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, CONTRACTOR shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.
- 17.8.4 Deductibles or 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. At the option of SBCTA, if the deductible or SIR is greater than \$ 10,000 or five (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 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.

- 17.8.5 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.
- 17.8.6 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.
- 17.8.7 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 procurement@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.
- 17.8.8 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.
- 17.8.9 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.

- 17.8.10 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.
- 17.8.11 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 Vendor; 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 Vendor under this agreement.
- 17.8.12 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.
- 17.8.13 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.
- 17.8.14 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.

17.8.15 Review of Coverage. SBCTA may at any time review the coverage, form, and amount of insurance required under this contract, and may require the CONTRACTOR 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 (60) 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.

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

ARTICLE 18. INDEMNITY

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by SBCTA) and hold harmless San Bernardino County Transportation Authority, Southern California Regional Rail Authority (operating as Metrolink) and their 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 duties to defend and indemnify 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 19. 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. All deliverables requested by SBCTA shall be furnished within five (5) working days.

ARTICLE 20. RECORD AND INSPECTION AND AUDITING

SBCTA, or any of its designees, representatives or agents, 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 21. 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 22. 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 23. 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 24. 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 25. PRECEDENCE

In the event of any conflict the order of precedence shall apply as follows:

1. SBCTA Contract
2. Invitation for Bid (IFB) and Bidder's Bid
3. Notice to Bidders
4. Special Provisions
5. Technical Specifications
6. Project Plans

ARTICLE 26. 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) on the first business day following delivery by fax or email when made not during regular business hours; or (c) on 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: CONSTRUCTION	To: SBCTA
	1170 W. 3rd Street, 2nd Floor
	San Bernardino, CA 92410-1715
Attn:	Attn: Joy M. Buenaflor
2nd Contact:	Cc: Procurement Manager/procurement@gosbcta.com
Email:	Email: jbuenaflor@gosbcta.com
Phone:	Phone: (909) 884-8276

ARTICLE 27. 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 **Five Thousand Dollars (\$5,000)** per each calendar day of delay.

Separately should the CONTRACTOR fail to complete all work described as Intermediate Milestone 1 within eighty days (80) of start of project, 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 **Five Thousand Dollars (\$5,000)** per each calendar day of delay.

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 28. ASSIGNMENT

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

ARTICLE 29. SUBCONTRACTS

29.1 CONTRACTOR shall perform with its own organization contract work amounting to not less than **twenty 20 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.

29.1.1 "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.

29.1.2 "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.

29.2 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.

29.3 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 30. COORDINATION WITH OTHER CONTRACTS

SBCTA may undertake or award other contracts for work, and CONTRACTOR shall cooperate fully with the other contractor's 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.

During performance of work by the Contractor, a separate contractor will be building the Hydrogen Fueling Station located just west of the project site. That separate contractor will be utilizing the same access gate to the site utilized by the Contractor. Refer to the Technical Specifications for more information about the Hydrogen Fueling Station work.

ARTICLE 31. PREVAILING WAGE REQUIREMENTS

31.1 CONTRACTOR shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the Work.

31.2 Any subcontract entered into as a result of this Contract if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

ARTICLE 32. SAFETY

32.1 In the performance of this Contract, CONTRACTOR shall comply with all applicable federal, State, and local laws governing safety, health and sanitation, and railroads (49 CFR Parts 200 through 272). 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 California Occupational Safety and Health Act of 1973.

32.2 It is a condition of this Contract that the Director of Industrial Relations 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 California Occupational Safety and Health Act of 1973.

32.3 Certain Work under the Contract shall be performed within railroad right-of-way or shall be accessed via railroad right-of-way owned by SBCTA and operated by SCRRA (Metrolink) and BNSF; therefore, CONTRACTOR and CONTRACTOR's employees, agents and representatives shall fully comply with SCRRA's (Metrolink) rules, regulations, restrictions, codes of conduct, standards, procedures, and safety obligations. Any deviations from same will require the advance written approval of SCRRA as applicable.

ARTICLE 33. DISADVANTAGED BUSINESS ENTERPRISE

33.1 Though no DBE goal is set for this Project, SBCTA encourages participation from small and Disadvantaged Business Enterprise (DBE). Firms interested in the DBE program may contact Shaneka Morris, Procurement Manager at (909) 884-8276.

ARTICLE 34. NONSEGREGATED FACILITIES

34.1 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.

34.2 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).

34.3 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 35. 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 36.

INTENTIONALLY OMITTED.

ARTICLE 37. 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 38. 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, and 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 difficulty or cost of interpretations made by CONTRACTOR on the basis of available information.

ARTICLE 39. CLEAN WATER REQUIREMENTS

CONTRACTOR shall comply with all applicable standards, orders, or regulations issued pursuant to the Porter-Cologne Water Quality Control Act (California Water Code §§13000 et seq.) and 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 the Regional Water Quality Control Board. CONTRACTOR shall include this requirement in every subcontract.

ARTICLE 40. DRUG FREE WORKPLACE

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

ARTICLE 41. SEVERABILITY

The partial or complete invalidity 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 42. 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 43. INCORPORATION OF RECITALS

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

ARTICLE 44. 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

By: _____
Name
Title

Date: _____

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

License Number

Federal Employer
Identification Number

SBCTA

By: _____
Dawn M. Rowe
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____
Julianna K. Tillquist
General Counsel

Date: _____

CONCURRENCE

By: _____
Shaneka M. Morris
Procurement Manager

Date: _____

BOND FORMS

**San Bernardino County
Transportation Authority**

Contract No. 23-1002922

PAYMENT BOND FORM

KNOW ALL MEN BY THESE PRESENTS:

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

CONTRACT No.: **23-1002922** (hereinafter referred to as the 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 (hereinafter referred to as 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 or his/her/its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named or referred to in section 9100 of the California Civil Code, with respect to such work and labor as required by Division 4, Part 6, Title 3, Chapter 5 (commencing at section 9950) 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 9100 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: _____

Signature of Principal Date

Surety: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Signature of Surety Date

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

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

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

Contract No. 23-1002922

PERFORMANCE BOND FORM

KNOW ALL MEN BY THESE PRESENTS:

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

CONTRACT NO. **23-1002922** (hereinafter referred to as the 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 (hereinafter referred to as 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 or his/her/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/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, and 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: _____

Signature of Principal Date

Surety: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Signature of Surety Date

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

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

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 twenty (20) 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. Contractor shall obtain Right of Entry (ROE) Permits from SBCTA and SCRRA prior to the start of construction.

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 Limited 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 make all documents below available on the Vendor Portal 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	1
Geotechnical Report	1

SP-06 SBCTA FURNISHED MATERIAL & EQUIPMENT

Reference is made to Specification Section 01 64 00, SBCTA FURNISHED MATERIAL & EQUIPMENT, and related specification sections.

The Following equipment will be furnished by SBCTA for the CONTRACTOR's incorporation into the Work.

- 750kW Engine Generator (Section 26 32 13, Engine Generators)
- Life Safety Automatic Transfer Switch and Bypass Isolation Switch (Section 26 36 23)
- Emergency Power Automatic Transfer Switch and Bypass Isolation Switch (Section 26 36 23)
- Portable Generator Docking Station (Section 26 36 05, Generator Docking Station)
- Main Switchboard (MSB) (Section 26 44 10, Switchboards)

The CONTRACTOR shall schedule its work based on the following anticipated delivery dates for the Equipment listed.

- 750kW Engine Generator – on or before 12/03/2024
- Life Safety Automatic Transfer Switch and Bypass Isolation Switch – on or before 08/13/2024
- Emergency Power Automatic Transfer Switch and Bypass Isolation Switch – on or before 08/13/2024
- Portable Generator Docking Station – on or before 05/21/2024
- Main Switchboard (MSB) – on or before 10/22/2024

Copies of the approved and approved as noted submittals for the SBCTA FURNISHED EQUIPMENT were provided to Bidders during the Bidding Process. Any subsequent revisions or modifications to shop drawings and other EQUIPMENT submittals will be provided to the CONTRACTOR as they become available.

CONTRACTOR shall unload, inspect, protect, store, install, start-up, field test, and commission the SBCTA FURNISHED EQUIPMENT in accordance with the Specifications. The CONTRACTOR shall not make any claim for costs associated with the protection and storage of the EQUIPMENT if it is delivered earlier than the dates indicated above.

Delivery of the EQUIPMENT later than the dates indicated above will not necessarily result in a time extension to the Contract Performance Periods. The CONTRACTOR is required to prove any potential or actual schedule delay impact through submission of a Project Schedule Time Impact Analysis in accordance with Specification Section 01 32 17 and the Contract terms.

SP-7 NOT USED

SP-8 LIMITATION ON THE USE OF HEAVY EQUIPMENT

Intentionally Omitted.

SP-9 COLLECTIVE BARGAINING/COOPERATIVE AGREEMENTS

Intentionally Omitted

SP-10 VARIATION IN ESTIMATED QUANTITY

Intentionally Omitted

SP-11 PAYMENT

Application for payment will be as indicated in the Technical Specifications, Division 1.

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 five (5) work 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.

- a. Entries shall match data on the Schedule of Values and the Contractor's construction schedule. Use updated schedules if revisions were made.
- b. 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.
- c. Certified payrolls shall be submitted to SBCTA as part of each application for payment.

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

- I. 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

- I. 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.
- c. 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 AND 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 Special Provisions Section entitled DISPUTES AND 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.

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 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.

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

1. Labor Costs

- a. Labor costs shall be based on the prevailing wage scale for each craft or type of work, as well as payroll tax Federal Insurance Contributions Act (FICA), Federal and State unemployment taxes (FUTA and SUTA), and fringe benefits as applicable. Payroll taxes shall be calculated on base wage only and not on fringe benefits. Fringe benefits shall be applied only to the straight-time component of cost, and shall not apply to the premium-time component unless otherwise required by the California Labor Code. Labor costs shall not include costs for assistant superintendents, office personnel, timekeepers, and maintenance mechanics unless authorized by SBCTA prior to the start of Changed Work. For equipment, the reports shall include size, type, identification number, rental rate, and hours of operation.
- b. Labor 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. Labor costs shall not include costs for assistant superintendents, office personnel, timekeepers, and maintenance mechanics unless authorized by SBCTA prior to the start of Changed Work.

2. Material Costs

- a. Material costs shall be the cost of all materials purchased by the Contractor and used in the Changed Work, including normal wastage allowance as per industry standards. The cost shall include freight, delivery, unloading, storage, and all

other charges. If directed by SBCTA, the Contractor shall obtain up to 3 material quotations from reputable Suppliers for review by SBCTA prior to issuing a purchase order.

- b. SBCTA reserves the right to review and accept materials and sources of supply of materials to be furnished by the Contractor or its Subcontractor(s), as well as to furnish the materials to the Contractor if necessary to facilitate the progress of the Work.

3. Construction Equipment Costs:

- a. The rates described in this subsection include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, and all incidentals.
- b. Construction equipment costs shall not include costs for items normally considered Contractor plant or fixed-cost items (such as buildings, trailers, office equipment, utilities, rail, piping, electrical distribution systems, processing plants, material handling facilities, work platforms, scaffolding, and concrete forms), unless such costs are occasioned by an extended duration of the Contract time for performance. Costs for these items may be considered on a cost-of-facilities capital basis if a WACN delays the Work and results in an extended duration of the Contract time for Performance. Construction equipment reports shall include size, type, identification number, rental rate (if applicable), and hours of operation.
- c. Construction equipment and tools having a replacement value of \$500 or less, whether or not consumed or used, shall be considered small tools and excluded from allowable Change costs.
- d. Fixed equipment ownership costs shall be limited to the following for multiple shift operations:
 - i. Overhead – at fifteen percent (15%) for one shift per day and
 - ii. Depreciation – Calculated at 100% of the hourly depreciation rate for the first shift each day, and at 50% of the hourly depreciation rate for the second and third shifts each day.

The Contractor shall be paid for the use of Contractor-owned Construction Equipment at the suggested applicable rates (daily, weekly, or monthly) listed for such Construction Equipment in the *Cost Reference Guide for Construction Equipment* (published by Dataquest of San Jose), which edition shall be the latest edition in effect at the time the Changed Work is performed. For the purpose of determination of the rates to be applied under the Contract, working conditions shall be considered to be normal unless otherwise determined by SBCTA. If it is deemed necessary by the Contractor to use Contractor-owned specialized equipment not listed in the applicable edition of the *Cost Reference Guide for Construction Equipment*, the Contractor shall submit the necessary cost data to SBCTA for its use in establishing the rate. If it is deemed necessary by the Contractor to use rental Construction Equipment due to the lack of availability of Contractor-owned Construction Equipment to perform the Changed Work, the Contractor shall submit

the necessary cost data and paid invoices to SBCTA for use in verification of such rental costs. Rates for Construction Equipment rented under lease-purchase or sale-leaseback arrangements, or rented from an organization under control of the Contractor (or under common control with the Contractor) shall be determined in accordance with the *Cost Reference Guide for Construction Equipment*. Compensation shall not be allowed while Construction Equipment is inoperative due to breakdown.

- e. Construction Equipment operators shall be paid for as stipulated in the Subsection entitled Labor Costs.
- f. Unless otherwise specified, manufacturer approved modifications shall be used to classify Construction Equipment for the determination of applicable rental rates. Construction Equipment that has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer of that Construction Equipment.
- g. Except as otherwise specified in this Section, equipment operation time will be computed in half and full hours. In computing the time for use of Construction Equipment, less than 31 minutes shall be considered one-half hour. Costs for Construction Equipment items on standby shall be limited to the sum of the hourly depreciation rates for 8 hours per 24-hour period, accrued after the Construction Equipment is idle for 16 hours in a 24-hour period. The time shall include the time required to move the Construction Equipment to the location of the Changed Work and return it to the original location (or to another location requiring no more time than that required to return it to its original location). Loading and transporting costs shall be allowed, in lieu of moving time, when the Construction Equipment is moved by means other than its own power. No payment for loading and transporting shall be made if the equipment is also used at the Worksite for other than the Changed Work.
- h. The Construction Equipment use period shall begin at the time the Construction Equipment is unloaded at the site of the Changed Work;
 - i. Include each day that the Construction Equipment is at the Worksite of the Changed Work, excluding Saturdays and Sundays and other legal holidays (unless such Work is performed on those days).
 - ii. Terminate at the end of the day on which the Work is completed or SBCTA instructs the Contractor to discontinue the use of such equipment.
- i. All Construction Equipment shall be substantiated by Supplier's invoices submitted with the current reports; or, if not then available, shall be submitted with subsequent reports. If vendors' invoices are not submitted within 30 days after completion of the Changed Work, or if in SBCTA's opinion the cost of such Construction Equipment is excessive, then the cost of such items shall be deemed to be the lowest current wholesale prices at which the items are available in the quantities required and delivered to the Worksite, less cash or trade discounts.

4. Overhead and Profit:

In addition to the Cost of Work, the Contractor shall be allowed compensation for overhead and profit. Such Cost of Work and the fee shall be the sole and exclusive compensation payable to the Contractor for Work performed pursuant to a WACN or a Change Order unless otherwise agreed in writing by SBCTA and the Contractor in the Change Order.

The Contractor shall be paid mark-ups of 20% for labor costs, 15% for material costs, and 15% for Construction Equipment use costs, subject to the following:

- 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, 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 be applied to the Subcontractor costs. Only one such mark-up will be permitted through all tiers of Subcontractor and/or Suppliers.
- c. An additional fee for mark-up of 5% of the Subcontractor's compensation shall be allowed the Contractor. Only one such mark-up will be permitted, regardless of the actual number of intervening Subcontractors.
- 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 or equipment 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 4-a through 4-f above in computing the value of the credit.

5. Acceleration:

- a. SBCTA reserves the right to accelerate the work of the Contract at any time during its performance. In the event that SBCTA directs acceleration, such directive will be given to the Contractor in writing. The Contractor shall keep cost and other Project records related to the acceleration directive separately from normal Project cost records and shall provide a written record of acceleration costs to SBCTA on a daily basis.
- b. In the event that the Contractor believes that some action or inaction on the part

of SBCTA constitutes an acceleration directive, the Contractor shall immediately notify SBCTA in writing that the Contractor considers the actions or inactions an acceleration directive. This written notification shall detail the circumstances of the acceleration directive. The Contractor shall not accelerate their work efforts until SBCTA responds to the written notification. If acceleration is then directed or required by SBCTA, all cost records referred to in section (a) shall be maintained by the Contractor and provided to SBCTA on a daily basis.

- c. In order to recover additional costs of acceleration, the Contractor must document that additional expenses were incurred and paid by the Contractor. Labor costs recoverable will only be overtime or shift premium costs or the cost of additional laborers brought to the site to accomplish the accelerated work effort. Equipment costs recoverable will only be the costs of added equipment mobilized to the site to accomplish the accelerated work effort.

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 C.F.R. § 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 § 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 its Contract scope to which it believes it is entitled to additional compensation, Contractor shall follow the following procedures:

- 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.

SP-13 CHANGE ORDER ACCOUNTING

In the event that an equitable adjustment under the 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 SBCTA or the matter is conclusively disposed of in accordance with Paragraph entitled "Disputes and Claims."

SP-14 INTERPRETATION OF CONTRACT DISPUTES

Intentionally Omitted

SP-15 DISPUTES AND CLAIMS

Intentionally Omitted

SP-16 Not Used

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.