



**INVITATION FOR BIDS (IFB) 24-1003059**

**FOR**

**INTERSTATE 10 ALABAMA STREET ESTABLISH EXISTING  
PLANTING PROJECT**

**KEY IFB DATES**

<b>IFB Issue Date:</b>	<b>February 12, 2024</b>
<b>Written Questions Deadline:</b>	<b>Monday, February 26, 2024 at 4:00 p.m.</b>
<b>Bid Due Date:</b>	<b>Friday, March 8, 2024, 2024 at 2:00 p.m.</b>
<b>Contract Award/Notice of Award Date:</b>	<b>April 2024</b>
<b>Notice To Proceed Date:</b>	<b>April 2024</b>



**February 12, 2024**

**SUBJECT: NOTICE INVITING SEALED BIDS  
INVITATION FOR BIDS (IFB) 24-1003059  
“INTERSTATE 10 ALABAMA STREET ESTABLISH EXISTING  
PLANTING PROJECT” (hereinafter referred to as “Project”)**

The San Bernardino County Transportation Authority, (“SBCTA”) invites sealed bids for **Interstate 10 Alabama Street Establish Existing Planting Project**, hereinafter referred to as “Project.”

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 March 2024. The IFB and IFB schedule updates and addenda, together with other important information are available on SBCTA’s website at [www.gosbcta.com](http://www.gosbcta.com) (“Bids & RFPs” under “DOING BUSINESS”). Firms are requested to check the Vendor Portal periodically, and no less frequently than weekly, for IFB updates, addenda and other information. All bidders will be held accountable for compliance with all updates, addenda and other information posted on the Vendor Portal. Please note that SBCTA will not be responsible for mailing any addenda, schedule updates or other information to any firm.

All questions and requests for clarifications to this IFB or approved equal requests must be put in writing and submitted to SBCTA electronically via Planet Bids, and they must be received by SBCTA no later than **4:00 p.m., on Monday, February 26, 2024**. All questions received after the date and time specified may or may not be responded to, at the sole discretion of SBCTA. SBCTA’s responses to the questions received by the date and time identified herein will be posted on the Vendor Portal on SBCTA’s website at [www.gosbcta.com](http://www.gosbcta.com): click on “Doing Business,” which will take you to the “Bids & RFPs” page. There, click on the tab “Vendor Portal.”

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

Bids are due at or before **2:00 p.m. on Friday, March 8, 2024**. Bids must be submitted electronically through SBCTA’s Vendor Portal PlanetBids.

To propose for this project, vendors must be registered with SBCTA’s PlanetBids Vendor Portal website. A firm must accept the terms and conditions in order to proceed. Firms may save their bid at any time as a draft. Firms may edit the bid as often as they need to until the IFB closes. The PlanetBids system will not accept bids after the due date and time specified for this procurement and SBCTA will not consider any late submittals.

Please note that where two or more firms, persons or entities wish to submit one bid in response

to this IFB, they should do so on a prime/sub-consultant basis rather than as a joint venture. SBCTA will contract with a single firm, person, or entity only, and not with a joint venture.

Bids will be electronically unlocked, and the results will be made available to view, through the Vendor Portal at **2:00 p.m. on Friday, March 8, 2024.**

**General description of work:**

The project is located on I-10 and Alabama Street in the City of Redlands in the County of San Bernardino. The limits of work are on I-10 PM 29.2 to 29.4 and Alabama Street from Orange Tree Lane to Industrial Park Avenue, including the interchange ramp areas.

The work involves maintenance of landscaping improvements including trees, shrubs, groundcover plantings, wood mulch and other erosion control items, gravel mulch and decorative boulders. Work also includes maintenance of irrigation systems consisting of irrigation controllers, remote control valves, sprinkler assemblies, backflow preventer assemblies, flow sensors, water meter, irrigation pipes and supply lines, and other miscellaneous appurtenances, and modification of existing electrical and communication systems.

The awarded contractor shall possess a **Class C-27** 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, 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 this chapter, unless currently registered and qualified to perform public work pursuant to 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 Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

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

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

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

**INVITATION FOR BIDS 24-1003059**

**FOR**

**INTERSTATE 10 ALABAMA STREET ESTABLISH EXISTING PLANTING PROJECT**

**I. INSTRUCTION TO BIDDERS**

The San Bernardino County Transportation Authority (“SBCTA”) is soliciting bids from qualified firms (“firms” or “bidders”), for the Interstate 10 Alabama Street Establish Existing Planting Project.

**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: Jenny Herrera - Procurement Analyst III  
jherrera@gosbcta.com**

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

**C. PRE-BID CONFERENCE**

INTENTIONALLY OMITTED.

**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 they are satisfied with the general and local conditions to be encountered; the character, quality, and scope of work to be performed; quantities and type of materials to be furnished; and character, quality, and quantity of surface and subsurface materials or obstacles.

## **E. SENSITIVE SECURITY INFORMATION (SSI) REQUIREMENTS**

INTENTIONALLY OMITTED.

## **F. WRITTEN QUESTIONS/APPROVED EQUALS**

All questions, requests for clarification or approved equal requests must be put in writing and submitted electronically via PlanetBids and they must be received by SBCTA no later than **4:00 p.m. on Monday, February 26, 2024**. SBCTA's responses to the questions received by the date and time identified herein will be posted on the PlanetBids.

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

## **G. ADDENDA**

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 on PlanetBids.

## **H. CONFLICT OF INTEREST**

Any 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. A firm who is prohibited from submitting a bid in response to this IFB will not be prevented from participating in future projects to the extent that no direct conflict of interest exists at that time. The determination of a conflict of interest, direct or incidental, shall be made by SBCTA's Executive Director or designee based upon substantial evidence.

## **I. 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.

## **J. IRAN CONTRACTING ACT OF 2010**

*INTENTIONALLY OMITTED*

## **K. 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](http://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](http://dir.ca.gov).

#### **L. 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 and 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.

#### **M. TAXES**

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

#### **N. LICENSING REQUIREMENTS**

The contractor shall possess a **Class C-27** 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.

#### **O. 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 and compliance of 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 (no photo copies) will be allowed unless otherwise stated elsewhere in this IFB. If any forms are incomplete or missing, the Bid may be considered non-responsive and subject to rejection at the sole discretion of SBCTA.
- B. Bids must be submitted electronically through SBCTA’s Vendor Portal: PlanetBids at or before **2:00 p.m., on Friday, March 8, 2024**. To bid for this project, firms must be registered with SBCTA’s Vendor Portal.
- C. A firm must accept the PlanetBids terms and conditions in order to proceed. Firms may save their bid at any time as a draft. Firms may edit the bid as often as they need to until the Invitation for Bids (IFB) closes. The PlanetBids system will not accept bids after the due date and time specified for this procurement and SBCTA will not consider any late submittals.
- D. Please note that where two or more firms, persons or entities wish to submit one bid in response to this IFB, they should do so on a prime/subcontractor basis rather than as a joint venture. SBCTA will contract with a single firm, person or entity only and not with a joint venture.
- E. Bids will be electronically unlocked, and the results will be made available to view through PlanetBids by **2:00 p.m., on Friday, March 8, 2024**.

## III. ACCEPTANCE OF BIDS

SBCTA reserves the right to accept or reject any or all bids, to waive any informalities or irregularities in any bid, to determine which bid is the lowest responsive bid of a responsible bidder and which bid should be accepted in the best interest of SBCTA. SBCTA reserves the right to accept, to withdraw, or to cancel this IFB at any time without prior notice, and SBCTA makes no representation that any contract will be awarded to any firm responding to this IFB.

## IV. WITHDRAWAL OF BIDS

A bidder or authorized agent of a bidder may withdraw its bid at any time before the bid opening date and time by submitting a written request to SBCTA, Attn: Procurement Manager, at the 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) cash, (ii) a cashier’s check made payable to SBCTA, (iii) a certified check, made payable to SBCTA, or (iv) 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 thirty percent (30%) of the total amount of the work with its own forces. If the bidder is not proposing to use subcontractors, or the portion of the work is less than ½ of 1%, or \$10,000, the bidder is to acknowledge the subcontractor listing form in this IFB with “Not Applicable”.

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

## **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 M. 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
9. Disclosure of Campaign Contributions to Board of Directors
10. Certification Regarding Project And Worker Safety Requirements
11. Contractor Questionnaire

## **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**

**INTERSTATE 10 ALABAMA STREET ESTABLISH EXISTING PLANTING PROJECT**

**CONTRACT NO. 24-1003059**

**(Form must be completed in its entirety)**

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 State of California Department of Transportation Standard Plans dated 2018, Standard Specifications dated 2018, and safety related portions dated 2018 and latest updates, the 2018 Green Book, 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 the 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 FORM24-1003059**

The undersigned hereby acknowledges the following:

1. The Project Plans dated **June 21, 2021**, Invitation for Bid, and Special Provisions dated **December 20<sup>th</sup>, 2023**, for the work to be done are entitled:

### **INTERSTATE 10 ALABAMA STREET ESTABLISH EXISTING PLANTING PROJECT**

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:

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

**SBCTA**  
**BID FORM 24-1003059**  
**(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 hereby lists the names of all persons interested in the forgoing bid as principals and are as follows:

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

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**BID FORM 24-1003059**  
**(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, are true and correct and that the Bidder has complied with the requirements of section 11102 of the Fair Employment and Housing Council Regulations (Chapter 5, Title 2 of the California Code of Regulations). 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

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



**CERTIFICATE OF ACKNOWLEDGMENT**  
**BIDDERS BOND**  
**CONTRACT 24-1003059**

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 forgoing 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 [jherrera@gosbcta.com](mailto:jherrera@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

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

**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:**

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**CERTIFICATION REGARDING PROJECT AND WORKER SAFETY  
REQUIREMENTS**

\_\_\_\_\_ [insert contractor name] hereby certifies the following responses under penalty of perjury, and to the best of its knowledge and belief, on behalf of its principals, and/or any joint venture in which it is or was a partner, member, and/or participant.

**In the past three years have you, your principal(s), and/or any joint venture in which you or your principal(s) were a partner, member, and/or participant, had any portion of its work on a project fully or partially terminated, suspended, stopped, and/or delayed as a result of safety violations for which you or any person under contract with you were responsible?**

**CHECK ONE:  YES    OR     NO**

**In the past three years has a final order or determination been made against you, your principal(s), and/or any joint venture in which you or your principal(s) were a partner, member, and/or participant, which resulted in the assessment of penalties for any “serious,” “willful,” or “repeat” violation(s) of safety or health regulations?**

**CHECK ONE:  YES    OR     NO**

\_\_\_\_\_ [insert contractor name] hereby certifies and affirms the truthfulness, completeness, and accuracy of the content of the statements and information above under penalty of perjury pursuant to the laws of the State of California and the United States of America.

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**CONTRACTOR NAME**

\_\_\_\_\_  
**NAME AND TITLE OF AUTHORIZED SIGNATORY**

**CERTIFICATE OF COMPLIANCE WITH  
INSURANCE REQUIREMENTS**

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

**INSURANCE REQUIREMENTS (check appropriate boxes below):**

- Contractor/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

- 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

- 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: \_\_\_\_\_

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**  
**DISCLOSURE OF CAMPAIGN CONTRIBUTIONS TO BOARD OF DIRECTORS**

Government Code Section 84308, 2 California Code of Regulations 18438.1-18438.8

No Member of the Board of Directors or alternates of the San Bernardino County Transportation Authority shall receive or solicit a campaign contribution of more than \$250 from Bidder or Bidder’s agent during the time of: 1) Bid solicitation; 2) Consideration of Bids received; and, 3) Awarding of a contract or execution of a purchase and sale agreement based on a Bid (collectively referred to as the “Proceeding”), and for 12 months following the conclusion of the Proceeding. This prohibition does not apply to the awarding of contracts that are competitively bid. In addition, Directors and alternates cannot participate in any such matters if they have received more than \$250 in campaign contributions within the last year from anyone financially interested in the Proceeding, such as Bidder and/or Bidder’s agent.

Pursuant to these requirements, Bidder shall disclose any campaign contribution in an amount of more than \$250 made by Bidder and/or Bidder’s agent to any Director within 12 months from the date of these Bid Documents/Request for Proposals (as applicable). For the purpose of this disclosure obligation, contributions made by Bidder within the preceding 12 months shall be aggregated with those made by Bidder’s agent within the preceding 12 months or the period of the agency relationship between the Bidder and Bidder’s agent, whichever is shorter. In addition, Bidder and/or Bidder’s agent shall not make a contribution of more than \$250 to a Director or alternate during the Proceeding and for 12 months following the conclusion of the Proceeding.

The disclosure by Bidder, as set forth herein, shall be incorporated into the written record of the Proceeding and shall be made available to the public for inspection and copying.

A current list of the Board of Directors and alternates of the San Bernardino County Transportation Authority is attached as Attachment A.

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any SBCTA Director or alternate in the 12 months preceding the date of issuance of this Request for Bids/Requests for Proposals?

\_\_\_\_\_ YES    \_\_\_\_\_ NO

If yes, please identify the Board member or alternate and date of contribution:

\_\_\_\_\_ Date: \_\_\_\_\_

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any Board member or alternate?

\_\_\_\_\_ YES    \_\_\_\_\_ NO

If yes, please identify the Board member or alternate and date of contribution:

\_\_\_\_\_ Date: \_\_\_\_\_

Answering yes to either of the two questions above does not preclude SBCTA from awarding a

bid to your firm. It does, however, preclude the identified Board member or alternate from participating in the Bid/contract award process for this Bid/contract.

**BIDDER:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Date

SBCTA BOARD OF DIRECTORS AND ALTERNATES

Agency	Board Representative	Alternate
City of Adelanto	Daniel Ramos	Gabriel Reyes
City of Barstow	Carmen Hernandez	Marilyn Kruse
City of Big Bear Lake	Rick Herrick	Randall Putz
City of Chino	Eunice Ulloa	Marc Lucio
City of Chino Hills	Ray Marquez	Cynthia Moran
City of Colton	Frank Navarro	David Toro
City of Fontana	Acquanetta Warren	Peter Garcia
City of Grand Terrace	Sylvia Robles	Bill Hussey
City of Hesperia	Rebekah Swanson	Brigit Bennington
City of Highland	Larry McCallon	Penny Lilburn
City of Loma Linda	Bhavin Jindal	Ron Dailey
City of Montclair	John Dutrey	Tenice Johnson
City of Needles	Janet Jernigan	Kirsten Merritt
City of Ontario	Alan Wapner	Paul Leon
City of Rancho Cucamonga	L. Dennis Michael	Lynne Kennedy
City of Redlands	Paul Barich	Mario Saucedo
City of Rialto	Deborah Robertson	Andy Carrizales
City of San Bernardino	Helen Tran	Damon Alexander
City of Twentynine Palms	Joel Klink	Dan Mintz, Sr.
City of Upland	Rudy Zuniga	James Breitling
City of Victorville	Debra Jones	Bob Harriman
City of Yucaipa	Bobby Duncan	Matt Garner
County of San Bernardino 1 <sup>st</sup> District	Paul Cook	N/A
County of San Bernardino 2 <sup>nd</sup> District	Jesse Armendarez	N/A
County of San Bernardino 3 <sup>rd</sup> District	Dawn Rowe	N/A
County of San Bernardino 4 <sup>th</sup> District	Curt Hagman	N/A
County of San Bernardino 5 <sup>th</sup> District	Joe Baca	N/A
Town of Apple Valley	Art Bishop	Larry Cusack
Town of Yucca Valley	Rick Denison	Robert Lombardo

**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, including joint ventures through which you and/or your principal(s) have conducted business? \_\_\_\_\_  
\_\_\_\_\_

1.3 Name(s) and title(s) of person(s) authorized to execute contracts 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 (individually or a joint venture in which your business or its principal(s) was a partner, member, and/or participant) has worked in the past three 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.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ [insert Contractor name] hereby certifies and affirms the truthfulness, completeness, and accuracy of the content of the statements and information above under penalty of perjury pursuant to the laws of the State of California and the United States of America.

---

Signature

---

Contractor Name

---

Name and Title of Authorized Signatory

# **ATTACHMENT “A” CONTRACT**

**CONTRACT 24-1003059**

**BY AND BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

---

**FOR**

**INTERSTATE 10 ALABAMA STREET ESTABLISH EXISTING PLANTING  
PROJECT**

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. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino, California 92410-1715, and Name of (“CONTRACTOR”) whose address is \_\_\_\_\_. SBCTA and CONTRACTOR are each a “Party” and collectively the “Parties” herein.

**RECITALS:**

**WHEREAS**, SBCTA has determined that it requires establishment of existing planting; 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 (IFB) 24-1003059 dated February 12, 2024; bid dated \_\_\_\_\_; the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished; Project Plans and Specifications dated June 21, 2021; Addenda Nos. (enter number); Special Provisions dated **December 20, 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 7 days from the date CONTRACTOR receives payment from SBCTA. SBCTA shall hold retainage from CONTRACTOR of five percent (5%) from each invoice and shall make prompt and regular incremental acceptances of portions, as determined by SBCTA, of the contract work and pay retainage to the CONTRACTOR based on these acceptances. The CONTRACTOR or subcontractor(s) shall return all monies withheld in retention from all subcontractors within 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 **(Write out Dollar Amount) \$(Enter Numeric Amount)**, 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.

**APPROVED BID ITEMS LIST  
FROM WINNING BIDDER WILL BE ADDED TO THE  
FINAL CONTRACT**

## **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. SCHEDULE**

CONTRACTOR agrees to complete the work within the time period as stipulated in the Special Provisions referenced herein. CONTRACTOR shall incur no costs (excluding insurance and bonds) and shall not perform or furnish any work, services or equipment under this Contract, unless and until SBCTA has issued a written Notice To Proceed (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.

10.2 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."

10.2.1 EEO Officer: CONTRACTOR will designate and submit to SBCTA in writing the EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active CONTRACTOR program of EEO and who must be assigned adequate SBCTA 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 insure 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 is obligated to fully disclose to SBCTA, in writing, any 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 pursuant to a prior contract, 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 CONSULTANT, 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.
- 13.7 Applicable patent rights provisions regarding rights to inventions shall be included in the Contract as appropriate (48 CFR 27, Subpart 27.3, Patent Rights under Government Contracts for federal-aid contracts).
- 13.8 CONTRACTOR, its employees, agents and subcontractors shall be required to comply with SBCTA's Confidentiality Policy; anyone who may have access to Personally Identifiable Information ("PII") and/or Sensitive Security Information ("SSI") will be required to execute a Confidentiality Agreement.

## **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 insolvency, 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**

17.1 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:

### **17.2 Commercial General Liability Insurance -**

- CONTRACTOR shall maintain a commercial general liability policy written on an occurrence form that shall provide coverage at least as broad as the coverage provided by ISO form CG 00 01. The Indemnified Parties shall be named, by specific endorsement, as additional insureds using ISO form CG 20 10 10 01 and ISO form CG 20 37 10 01, or their respective equivalent forms, to include

completed operations coverage. and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability of not less than **\$7,000,000 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.
  - \$1,000,000 per occurrence limit for personal injury and advertising injury
- 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.
- If this contract includes work in close proximity to an active railroad and Railroad Protective Liability Coverage is required then the CGL policy shall not exclude coverage of contractual liability relating to railroads or shall be endorsed by ISO Form CG 24 17, or equivalent acceptable to SBCTA, to remove all such exclusions to the coverage.
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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

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

If the CONTRACTOR elects to include an umbrella or excess policy to cover any of the total limits required beyond the primary commercial general liability policy limits and/or the primary commercial automobile liability policy limits, then the policy must include the following:

- The umbrella or excess policy shall follow form over the CONTRACTOR’S primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
- The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
- The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

- 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.

17.4 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.

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

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

Such policies shall contain a waiver of subrogation 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.

17.6 Professional Liability: Intentionally Omitted

17.7 Builder's Risk Insurance – Intentionally omitted

17.8 Contractor's Pollution Liability Insurance - Intentionally Omitted

17.9 Railroad Protective Liability Insurance:

**This coverage may be required by a third party railroad operator or railroad owner**

**anytime work is performed on or in close proximity to a railroad. CONTRACTOR is to conduct their own investigation of the RRPL requirements and shall meet the coverage and limits dictated by any third party railroad, but when required, in no event less than outlined below.**

Insurance Services Office Form Railroad Protective Liability, AAR-AASHTO (ISO/RIMA), in the name of the railroad owner and/or operator with respect to the operations the CONTRACTOR 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 \$6 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.

## 17.10 General Provisions

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

17.10.2 **Additional Insured 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, City of Redlands, and Caltrans, and their officers, directors, members, employees, and agents , as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR 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 any additional insured as to vicarious liability but shall allow coverage for all additional insureds to the full extent provided by the policy.

17.10.3 **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.

- 17.10.4 Deductibles and Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONTRACTOR shall be responsible for any deductible or self-insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONTRACTOR will pay, and shall require its sub-CONTRACTORS to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. Without SBCTA's Risk Manager's expressed written approval no deductibles or SIR will be allowed. At the option of SBCTA, if the deductible or SIR is approved and it is greater than \$10,000 or one (1) percent of the amount of coverage required under this Contract, whichever is less, the CONTRACTOR shall guarantee that either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONTRACTOR shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA shall have the right to review any and all financial records that SBCTA, at its sole discretion deems necessary to approve any deductible or SIR. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONTRACTOR. The Contractor's policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any Contractor's deductible or SIR.
- 17.10.5 CONTRACTOR's and Subcontractors' Insurance Will Be Primary - All policies required to be maintained by the CONTRACTOR or any subcontractor with the exception of Professional Liability, Pollution 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.
- 17.10.6 Waiver of Subrogation Rights – To the fullest extent permitted by law, CONTRACTOR hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other CONTRACTOR, subcontractor or sub-subcontractor performing work or rendering services on behalf of SBCTA, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, CONTRACTOR shall require similar written express waivers and insurance clauses from each of its subcontractors of every tier. CONTRACTOR shall require all of the policies and coverages required in this Article to waive all rights of subrogation against the

Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit CONTRACTOR from waiving the right of subrogation prior to a loss or claim.

- 17.10.7 Cancellation – If any insurance company elects to cancel or non-renew coverage for any reason, CONTRACTOR will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONTRACTOR will provide SBCTA ten (10) days prior written notice. In any event, CONTRACTOR will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONTRACTOR receives within one business day after CONTRACTOR receives it by submitting it to SBCTA at insurance@gosbcta.com to the attention of SBCTA’s Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.
- 17.10.8 Enforcement – SBCTA may take any steps as are necessary to assure CONTRACTOR’s compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONTRACTOR fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONTRACTOR or withhold such expense from amounts owed CONTRACTOR, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONTRACTOR of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONTRACTOR, or any subcontractor of any tier of their obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract.
- 17.10.9 No Waiver - Failure of SBCTA to enforce in a timely manner any of the provisions of this Article shall not act as a waiver to enforcement of any of these provisions at a later date.
- 17.10.10 Subcontractors’ Insurance - Insurance required of the CONTRACTOR shall be also provided by subcontractors or by CONTRACTOR on behalf of all subcontractors to cover their services performed under this Contract. CONTRACTOR may reduce types and the amounts of insurance limits provided by subcontractors to be proportionate to the amount of the subcontractor’s contract and the level of liability exposure for the specific type of work performed by the subcontractor. CONTRACTOR shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subcontractor.
- 17.10.11 Higher limits. The Insurance obligations under this agreement shall be the greater of 1- all the Insurance coverage and limits carried by or available to the 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.

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

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

17.10.15 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.

## **ARTICLE 18. INDEMNITY**

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by SBCTA) and hold harmless SBCTA, City of Redlands, Caltrans and their respective officers, directors, members, employees, contractors, agents and volunteers (collectively the "Indemnitees") from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause



whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. To the extent permitted by law, CONTRACTOR's duty to defend and indemnification obligations 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.

#### **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 case of a discrepancy among the Contract Documents, the order of precedence shall be as noted in the Notice to Bidder and Special Provisions.

**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 during regular business hours; (b) on the first business day following delivery by fax 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.

<b>To: CONSTRUCTION</b>	<b>To: SBCTA</b>
	<b>1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor</b>
	<b>San Bernardino, CA 92410-1715</b>
<b>Attn:</b>	<b>Attn: Pavitra Pandey</b>
<b>2<sup>nd</sup> Contact:</b>	<b>Cc: Procurement Manager</b>
<b>Email:</b>	<b><a href="mailto:ppandey@gosbcta.com">ppandey@gosbcta.com</a>; <a href="mailto:smorris@gosbcta.com">smorris@gosbcta.com</a></b>
<b>Phone:</b>	<b>Phone: (909) 884-8276</b>

**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 **One Thousand Dollars (\$1,000.00)** per each calendar day of delay as identified in the weekly statement of working days issued by SBCTA. 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, 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 30 percent** (or a greater percentage if specified elsewhere in the Contract) of the total original contract price, excluding any specialty items designated by SBCTA. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by CONTRACTOR's own organization (23 CFR § 635.116).

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.

### **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 (23 CFR § 635.108). The CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as SBCTA may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. It is a condition of this Contract, and shall be made a condition of each subcontract, which the CONTRACTOR enters into pursuant to this Contract, that CONTRACTOR and any subcontractor shall not permit any employee, in performance of this Contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3704, 3705).
- 32.2 Pursuant to 29 CFR 1926.3, it is a condition of this Contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3704, 3705).

### **ARTICLE 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 M. Morris, Procurement Manager at (909) 884-8276.

### **ARTICLE 34. NONSEGREGATED FACILITIES**

- 34.1 Definitions. As used in this clause—

Gender identity has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\]FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT]FAQs.html).

"Segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, 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, that are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, sex, sexual orientation, gender

identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

Sexual orientation has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\]FAQS.html](http://www.dol.gov/ofccp/LGBT/LGBT]FAQS.html).

34.2 The CONTRACTOR agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this Contract.

34.3 The CONTRACTOR shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

#### **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. CONFIDENTIALITY**

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.

#### **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 from SBCTA will not relieve the CONTRACTOR from responsibility.

**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**

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
Name  
Title

By: \_\_\_\_\_  
Dawn M. Rowe  
President, Board of Directors

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

**APPROVED AS TO FORM**

\_\_\_\_\_  
License Number

By: \_\_\_\_\_  
Juanda L. Daniel  
Assistant General Counsel

\_\_\_\_\_  
Federal Employer  
Identification Number

Date: \_\_\_\_\_

**CONCURRENCE**

By: \_\_\_\_\_  
Shaneka M. Morris  
Procurement Manager

Date: \_\_\_\_\_

# **BOND FORMS**



**San Bernardino County  
Transportation Authority**

**Contract No. 24-1003059**

**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.: **24-1003059** 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 insure 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/or Caltrans and judgment is recovered, Surety shall pay all costs incurred by SBCTA and/or Caltrans 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.24-1003059**

**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. (**Enter Contract No.**) 24-1003059

(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 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.