



SBCTA

REQUEST FOR PROPOSALS (RFP)

17-1001740

FOR

VANPOOL PROGRAM MARKETING

KEY RFP DATES

RFP Issue Date:	May 18, 2017
Question Submittal Deadline:	June 1, 2017, @ 4:00 p.m.
Proposal Due Date:	June 13, 2017, @ 2:00 p.m.
Interview Date:	June 27, 2017 - Tentative
Contract Award Date:	July 12, 2017
Notice To Proceed:	July 2017

FEDERAL TRANSIT ADMINISTRATION FUNDED PROJECT

PLAN. BUILD. MOVE



May 18, 2017

**SUBJECT: NOTICE OF REQUEST FOR PROPOSALS (RFP) 17-1001740
“VANPOOL PROGRAM MARKETING”, (hereinafter referred to as “Project”)**

The San Bernardino County Transportation Authority (“SBCTA”), invites proposals from qualified firms to provide Vanpool Program Marketing as identified in this RFP.

Firms intending to submit proposals should note the “Key RFP Dates” on the cover of this RFP. It is our intention, subject to approval by SBCTA’s Awarding Authority, to have the selected firm under contract by July 2017. Firms submitting proposals will be evaluated based on qualifications, prior experience with the same or similar type of services identified in the attached Scope of Work, proposed staffing, and the firm’s understanding of the needs and requirements of the Project as identified in this RFP.

The RFP and all RFP schedule updates and addenda, together with other important information, are available on SBCTA’s website at: www.gosbcta.com, click on “Contracting”, and select “Bid Opportunities”. The website is the official means of notification to all prospective proposers. Firms are requested to check the website periodically, and no less frequently than weekly, for RFP schedule updates, addenda, and other information. All proposers will be held accountable for compliance with all updates, addenda and other information posted on the website. Please note that SBCTA will not be responsible for mailing any addenda, schedule updates or other information to any firm.

Proposals are due on or before **2:00 p.m., Tuesday, June 13, 2017.**

All questions related to this RFP must be put in writing and submitted to SBCTA no later than **4:00 p.m., Thursday, June 1, 2017.** All questions must be clearly labeled, “**Written Questions**” and submitted electronically to:

**Alicia Johnson
Procurement Analyst
procurement@gosbcta.com
RFP17-1001740**

Questions received after the deadline may or may not be responded to at the sole discretion of SBCTA. Questions received by the deadline or responded to after the deadline at the discretion of SBCTA, and the written responses will be posted via written addendum on SBCTA’s website at [http: www.gosbcta.com](http://www.gosbcta.com), click on “Contracting”, then select “Bid Opportunities”.

This is a Federal-aid project: The contract to be awarded is financed in part by the U.S. Department of Transportation (US DOT). Proposers are required to certify that they meet all federal requirements identified in this RFP, including but not limited to all applicable equal opportunity laws and regulations.

If the contract is awarded, the Proposer awarded the contract will be required to comply with all applicable laws and regulations, including but not limited to, equal opportunity laws and regulations.

Firms using subconsultants are encouraged to subcontract with small and disadvantaged businesses to the maximum extent possible.

The 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 RFP.

SBCTA

REQUEST FOR PROPOSALS 17-1001740

FOR

“VANPOOL PROGRAM MARKETING”

I. PROPOSAL INSTRUCTIONS

A. INTRODUCTION

The San Bernardino County Transportation Authority (“SBCTA”) is soliciting proposals from qualified firms (“firms” or “proposers”) to assist SBCTA with **Vanpool Program Marketing**, (“Project”).

B. CONTACT INFORMATION

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

Alicia Johnson
Procurement Analyst
SBCTA
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715
(909) 884-8276
procurement@gosbcta.com

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

C. PRE PROPOSAL CONFERENCE

Intentionally Omitted

D. WRITTEN QUESTIONS/CLARIFICATIONS

All questions and or clarifications to this RFP must be put in writing and submitted electronically to the Procurement Analyst at procurement@gosbcta.com, and they must be received by SBCTA no later than **4:00 p.m., on Thursday, June 1, 2017**. Questions received after the date and time specified may or may not be responded to, at the sole discretion of SBCTA. All questions/clarifications must be clearly labeled **“Written Questions for RFP 17-1001740”**. SBCTA is not responsible for failure to respond to questions that are not appropriately marked. SBCTA’s responses to the questions received by the date and time identified herein, including SBCTA’s answers will be posted on SBCTA’s website at www.gosbcta.com, click on “Contracting”, then select “Bid Opportunities”.

E. ADDENDA

Any changes to this RFP 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 RFP as a result of any oral discussions and/or instructions. Proposers shall acknowledge receipt of any addenda in their proposal.

F. CONTRACT TYPE

A Time and Materials contract will be used for the Project. Any work provided by the consultant that is not specifically covered by the contract, will not be reimbursed. Please refer to the form of contract attached to this RFP for more detailed information.

G. INFORMED PROPOSER

Proposers shall review the Scope of Work, (identified herein as Attachment A), and contract (identified herein as Attachment C), for a complete understanding of the terms and conditions in this RFP. Proposers are expected to be fully aware of the conditions, requirements, and Scope of Work before submitting any proposal. Failure to do so will be at the proposer's own risk. By submitting a proposal, the proposer represents that it is legally qualified and fully capable of performing quality work to achieve SBCTA's objectives and comply with all requirements identified in this RFP and any and all schedule updates, addenda and other information and instructions posted on SBCTA's website.

H. CONFLICT OF INTEREST

Any person or firm that has assisted SBCTA in preparing any aspect of this RFP or any cost estimate associated with the Scope of Work related to this RFP is prohibited from submitting a proposal in response to this RFP. Firms that received assistance from any such person or entity, or who will use the services of such person or entity in performing the work will be disqualified. A firm who is prohibited from submitting a proposal in response to this RFP will not be prevented from participating in future projects to the extent that no direct conflict of interest exists at the time. Firms responsible for a project's design may not participate in construction management or construction inspection for the project. The determination of a conflict of interest, direct or incidental, shall be made by SBCTA based upon substantial evidence.

I. PRE-CONTRACTUAL EXPENSES

SBCTA shall not be liable for any pre-contractual expenses incurred by the firm in preparation or submittal of their proposal. The proposer shall not include any such expenses as part of their price proposal. Prohibited pre-contractual expenses include any and all expenses incurred by the proposer prior to issuance of the Notice To Proceed by SBCTA.

J. IRAN CONTRACTING ACT OF 2010

Intentionally Omitted

K. PREVAILING WAGES

Intentionally Omitted

L. MATERIALS FURNISHED BY SBCTA

All software, data, reports, surveys, drawings, specifications and other documents furnished to the consultant by SBCTA for the consultant's use in the performance of Work shall be made available only for the use in performing the assignment and shall remain the sole property of SBCTA. All such materials shall be returned to SBCTA in the format prescribed in Attachment A, "Scope of Work," upon completion of Work, termination of the contract, or other such time as SBCTA may determine.

M. DEBARMENT & SUSPENSION

Unless otherwise permitted by law, any person or firm that is debarred, suspended, or voluntarily excluded may not take part in any federally funded transaction, either as a participant or principal, during the period of debarment, suspension, or voluntary exclusion. Accordingly, SBCTA, acting in its capacity identified herein, may not enter into any transaction with such debarred, suspended, or voluntarily excluded persons or firms during such period. A process has been established by 2 CFR Part 180, as supplemented by 2 CFR Part 1200, as a means to ensure that debarred, suspended, or voluntarily excluded persons or firms do not participate in federally assisted projects. A person or firm that is unable to provide a positive certification as required by this RFP must submit a complete explanation attached to the certification. FTA will consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. Failure to furnish a certification or an explanation may disqualify that person or firm from participating in the project.

N. DISADVANTAGED BUSINESS OPPORTUNITIES

As a sub-recipient of Federal Transportation Administration (FTA) funds, SBCTA must comply with Title 49, Code of Federal Regulations (CFR), Part 26, entitled "Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs ("Regulations"). Omnitrans, the direct recipient of federal funds, has established a Race Neutral FTA DBE program, with which SBCTA, as sub-recipient of the FTA funds, must comply. Although there is no DBE goal on this project, SBCTA is obligated to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts. As such, SBCTA highly encourages the participation of DBE vendors and the utilization of DBE subcontractors in this project. Omnitrans, as direct recipient of funds, has an overall agency DBE goal of **8.4%**; any DBEs on this project will be used to satisfy the overall agency DBE goal.

CONSULTANT must complete and submit to SBCTA the following forms with the Proposal:

- Form 12-B, "Bidders List of Subcontractors (DBE and Non DBE Required) ½ of 1% or \$10,000.00 Share of Project)" Parts I and II
- Form 15-G, "Local Agency Bidder DBE Commitment", and
- Form 15-H, "DBE Information-Good Faith Efforts"

If the 8.4% goal is not met, the CONSULTANT should document adequate Good Faith Efforts, as defined in Attachment D Forms. Only DBE firms certified through the California Unified Certification Program (CUCP) will be counted towards the contract goal; however, all DBE participation shall be collected and reported. Please refer to Attachment D to this RFP for further information, instructions and forms. Bidders are advised that questions related to the DBE requirements must be submitted as a written question per the instructions in this RFP.

II. PROPOSAL SUBMITTAL

Proposals are due at or before **2:00 p.m., Tuesday, June 13, 2017**. One original, six copies, and a CD or Flash Drive with a PDF version of the proposal, are to be submitted to:

**Alicia Johnson
Procurement Analyst
SBCTA
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715
ATTENTION: PROPOSAL FOR RFP No. 17-1001740**

All proposals are to be submitted in a sealed package, clearly marked with the RFP number and title and with the proposer's name and address. Postmarks will not be accepted in lieu of receiving the proposals by the date and time specified. **Proposals received after the date and time specified will be returned to the firm without further consideration or evaluation.**

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

A. PROPOSAL CONTENT

The proposal is limited to 50 (8 ½" x 11") pages in no less than 11-point font. This page limit shall include the Table of Contents and resumes. Charts and schedules may be included in 11" x 17" format. Each page must be consecutively numbered. Proposals and cover letters shall not include any unnecessarily elaborate or promotional material. Lengthy narrative is discouraged, and presentations should be brief and concise. The page limit does not include the outside cover, section dividers, cover letter and RFP Forms. Proposals that do not contain the required information will be deemed non-responsive and will not be considered.

If at any time during the RFP process, a firm makes any changes to proposed key personnel or subconsultants, the firm must notify SBCTA in writing of those proposed changes as soon as they are known. SBCTA reserves the right to accept or reject such proposed changes or to revise the evaluation scoring to reflect the proposed staffing changes.

All proposals must include the following information:

1. Cover Letter

- Identification of all work to be performed by the prime firm.
- Identification of all proposed subconsultants including description of the work to be performed by the firm and each subconsultant proposed for the Project and an estimate of the percentage of work to be performed by each subconsultant.
- Indicate the location of the office from which the work will be performed.
- A memorandum from a principal of each subconsultant indicating the specific portion of the Work the subconsultant will be performing.
- Acknowledgement of all addenda.

- A signed statement by an officer of the prime firm attesting that all information in the proposal is true and correct.
- A signature of an authorized person within the prime firm who can bind the firm to the terms and conditions of the RFP.
- A statement that the proposal is valid for 180 calendar days from the date of submission.
- A list of all prime contracts (if any) awarded to the proposer by SBCTA for the last five (5) years. The list shall include a short description of the project, the award date, completion date, name of assigned Project Manager, and contract value.

2. Contract Termination Circumstances

If proposer has ever been terminated or suspended from a contract, describe the facts and circumstances in detail. Firms shall refer to SBCTA Policy No. 11000, for details. Firms may download the Policy from SBCTA's website at www.gosbcta.com, click on "Contracting", select "Bid Opportunities".

3. Technical Information

The technical portion of the proposal shall include the following information:

a. Qualifications, Related Experience, and References

This section of the proposal should establish the ability of the proposed team to satisfactorily perform the required work by reasons of: experience in performing work of the same or similar nature; demonstrated experience working with agencies and parties that have experience with these type of projects , if applicable; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references.

Specifically:

- Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; number of employees.
- Provide a general description of the firm's current financial condition; identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede ability to complete the Project.
- Describe the firm's experience in performing work of a similar nature to that solicited in this RFP, and the participation in such work by the key personnel proposed for assignment to this Project. Highlight the firm's and key personnel's experience with the work or services identified in the Scope of Work.
- Describe experience in working with the various government agencies that may have jurisdiction over the approval of the work specified in this RFP. Please include specialized experience and professional competence in areas directly related to this RFP.
- Provide a list of past joint work by the proposer and each subconsultant, if applicable. The list should clearly identify the project and provide a summary of the roles and responsibilities of each party.

- Provide a minimum of three (3) references for work of a similar nature for both the firm and the Project Manager (for a total of six (6) references). Furnish the name, title, address and telephone number and e-mail address of the person(s) at the client organization who is most knowledgeable about the work performed. References may also be supplied from other work not cited in this section as related experience.

b. Proposed Staffing and Project Organization

This section of the proposal should establish the method that will be used to manage the project as well as identify key personnel assigned and their qualifications.

Specifically:

- Provide education, experience with state and federal guidelines and applicable professional credentials of proposed project staff.
- Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, proposed position for this Project, current assignment, level of commitment to that assignment, availability for this assignment (provide percentage of workload availability), and how long each person has been with the firm. SBCTA reserves the right to review, approve and/or designate the positions and functions deemed to be "key" to the project and request information concerning key personnel not listed as such by the proposer. Identify "key" persons experience with working on FTA funded projects.
- Furnish brief resumes (not more than two [2] pages each) for the proposed key personnel.
- Include a project organization chart that clearly delineates communication and reporting relationships among the project staff, including subconsultants. Clearly identify which staff member works for their respective firm.
- Include a statement that key personnel will be available to the extent proposed, or designated by SBCTA, for the duration of the Project, acknowledging that no person designated as "key" to the Project shall be removed or replaced without the prior written concurrence of SBCTA.

c. Project Approach/Work Plan

This section of the proposal shall provide a narrative that addresses the Scope of Work and shows a clear understanding of the Project needs and requirements.

Specifically:

- Describe the approach and work plan for completing the tasks specified in the Scope of Work. The work plan shall be of such detail to demonstrate the firm's ability to accomplish the Project objectives and to meet the Project schedule.
- Outline sequentially the activities that would be undertaken in completing the tasks and specify who in the firm would perform the work.
- Furnish a Project schedule for each task and subtask in terms of elapsed weeks from the Project commencement date.
- Identify methods that will be used to ensure quality control as well as budget and schedule control for the project.

- Identify any special issues or problems that are likely to be encountered during this Project and how they will be addressed.

Proposers are encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the Project.

4. Forms

Proposers are required to complete and submit the following forms, which are enclosed in this RFP, with their proposals:

- a) Non-Lobbying Certification for Federal-Aid Contracts Instructions For Completion Of SF-LLL, Disclosure Of Lobbying Activities Disclosure Of Lobbying Activities
- b) Certification Regarding Debarment, Suspension, And Other Responsibility Matters - Primary Covered Transactions*
- c) Certificate of Compliance with Insurance Requirements
- d) Disclosure of Campaign Contributions to Board of Directors

*The top ranked firm's subconsultants, with subcontracts in excess of \$25,000, must complete the "Certification Regarding Debarment, Suspension And Other Ineligibility And Voluntary Exclusion – Lower Tier Covered Transactions", within ten (10) working days after the top ranked firm receives the "Notice of Intent To Award" letter issued by SBCTA.

5. Cost Proposal

Proposers shall complete and submit with their proposals the pricing documents identified as Attachment B to this RFP.

6. Scope of Work and/or Contract Exceptions

SBCTA does not anticipate making substantive changes to its contract. Proposers are asked to include in their proposal a written discussion of any and all proposed exceptions to or deviations from SBCTA's Scope of Work or form of contract presented herein as Attachments A and C, respectively. Proposers will be deemed to have accepted any and all terms and conditions not objected to or identified as an exception or deviation in the proposal and there will be no further negotiations of any such terms or conditions not presented in the proposal. SBCTA may reject proposals where identified exceptions or deviations affect terms or conditions that SBCTA considers non-negotiable.

7. Appendices

Information considered pertinent to this RFP or to the evaluation of qualifications of the proposer, which has not been specifically solicited in any of the aforementioned sections, may be placed in a separate appendix section. Appendices are not included within the page limit set forth above. Appendices should be relevant and brief.

III. ACCEPTANCE OF PROPOSALS

SBCTA reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in a proposal. SBCTA reserves the right to withdraw or cancel this RFP at any time without prior notice and SBCTA makes no representation that any contract will be awarded to any firm responding to this RFP. SBCTA reserves the right to reject all proposals and to re-issue (or not re-issue) a new RFP for the same or similar Work. SBCTA reserves the right to postpone proposal openings for its own convenience. Proposers may withdraw their proposals before the proposal submittal date by submitting a written request signed by an authorized representative of the firm and delivered to SBCTA's Procurement Analyst at the address identified herein.

IV. CONSULTANT SELECTION CRITERIA AND WEIGHTS

The primary objective of SBCTA is to select a qualified firm to perform the Work identified in the Scope of Work as identified herein. In addition, SBCTA has established the following criteria for the selection process:

- A. The selection process shall be fair, open, and competitive.
- B. The selection of the firm will be based on clearly stated objectives, identified in this RFP.
- C. Selection of the firm shall be based upon demonstrated competence, professional qualifications, experience, and capabilities to perform the required Work identified in the Scope of Work.
- D. Upon review of the proposals, a shortlist of firms within the competitive range will be invited to an interview tentatively scheduled for **June 27, 2017** at SBCTA's office located at 1170 W. 3rd Street, San Bernardino, CA 92410. Any contract awarded will be to the most technically qualified firm best conforming to the RFP, which is in the opinion of SBCTA, most advantageous to SBCTA, and with which a successful negotiation and agreement on cost and price can be concluded as set forth in Article V. below. The determination of the competitive range is at the sole discretion of SBCTA's Evaluation Committee.
- E. SBCTA reserves the right to reject any and all proposals. SBCTA is under no obligation to award a contract for the subject Work. At the conclusion of the evaluation process, the Evaluation Committee will recommend to the body or officer having authority to award the Contract on behalf of SBCTA ("Awarding Authority") the firm who ranked the highest in overall score and with whom negotiation and agreement on cost and price was successfully concluded. SBCTA reserves the right to request additional information and/or clarification from any or all proposers to this RFP, but is under no obligation to do so.
- F. Proposals will be evaluated based on the criteria and weights identified herein.
 - **Qualifications, Related Experience and References:** Firm's experience, years in business, and past and current client references; technical expertise and professional competence in areas directly related to this RFP, number of years' experience performing similar work; demonstrated ability to manage and coordinate the Work; deliver quality products and services; deliver projects within budget and on schedule; and experience working with public agencies identified in the RFP. – 30 points.
 - **Proposed Staffing and Project Organization:** Technical expertise and professional competence in areas directly related to the work identified in this RFP; level of experience, knowledge of state and federal guidelines and requirements, certifications and licenses required and training key personnel assigned, including subconsultants, if applicable; strength

of experience and stability of proposed personnel; breadth and depth of resources, coordination of Work and quality control; availability of proposed staffing; and concurrence with restrictions on changes in key personnel. – 25 points.

- **Work Plan:** Depth of understanding of SBCTA’s needs and requirements, and understanding of the Scope of Work. Proposer’s approach and methodology/systems reflecting the ability to provide the requested Work. Demonstrated knowledge of the Work being requested; identification and knowledge of all requirements cited in the Scope of Work; and proposed technical or procedural innovations identified in the proposal. – 25 points.
- **Price:** Reasonableness of fees proposed. The cost proposal follows prescribed format; includes breakdown of costs; is competitive with the marketplace for the same or similar services; and the proposed level of effort is consistent with the Scope of Work. - 20 points.

G. SBCTA shall select the highest ranked firms to participate in the interview process. The number of firms so invited shall be at the discretion of SBCTA, but shall not be less than two. Firms who are invited to the interview will be asked a series of questions which will be scored. The maximum score for the Interview phase will be 100 points. Upon completion of the interview, the Evaluation Committee shall compile their interview scores. The interview will be weighted – 60%, and the technical proposal will be weighted – 40% for a total of 100%.

V. NEGOTIATIONS AND AWARD

The contract, Scope of Work and cost proposal may be negotiated with the top ranked firm. However, SBCTA may elect to not negotiate with any of the firms, and/or not award the contract. Therefore, it is imperative that each Proposer submit their best price as part of their proposal.

Firms are advised that any recommendation for contract award is not binding on SBCTA until the Awarding Authority approves the contract and the contract is fully executed.

VI. PROTEST INFORMATION

SBCTA has on file written Protest Procedures (Policy 11007). Firms may download a copy from www.gosbcta.com, click on “Contracting”.

FTA protest procedures can be found in the “Best Practices Procurement & Lessons Learned Manual” at <https://www.transit.dot.gov/funding/procurement/best-practices-procurement-manual>. .

VII. DEBRIEFING

Firms who submit a proposal in response to the RFP shall be notified in writing when: the firm was not selected to receive further consideration in the RFP process; the firm was selected for the interview process and after the RFP Evaluation Committee’s recommendation to award has been determined. Firms who were not awarded the contract may obtain a debriefing by contacting SBCTA’s Procurement Analyst at procurement@gosbcta.com. Firms will have thirty (30) calendar days from the date identified in the written correspondence to request a debriefing.

VIII. PUBLIC RECORDS ACT

Proposals may be subject to public disclosure under the California Public Records Act and other public records laws, and by submitting a proposal, the proposer waives all rights to confidentiality of any information submitted in the proposal and agrees to any and all such disclosures required or

permitted by law. Proposals become the property of SBCTA when submitted and by submitting a proposal, the proposer agrees that SBCTA may use any information, documentation or writing contained in the proposal for any SBCTA purpose.

ATTACHMENT A - SCOPE OF WORK

SBCTA Vanpool Program Marketing and Branding Services Scope of Work (SOW)

I. BACKGROUND

The San Bernardino County Transportation Authority (SBCTA) anticipates launching in early 2018 a regional Vanpool Program (“Program”) aimed at reducing traffic congestion and air pollution in SBCTA’s jurisdictional area. For the purposes of the SBCTA Vanpool Program, the area served consists of all cities and county unincorporated areas located within San Bernardino County excluding the Victor Valley Transit Authority (VVTA) Consolidated Transportation Services Agency service area, which has its own vanpool program. A vanpool consists of five to 15 passengers commuting in a van that travels on a regular basis to and from work and/or vocational/post-secondary education destination(s). The participants share the cost of the service, or their employer may subsidize all or part of the costs. SBCTA will administer the Vanpool Program through contracts with Vanpool Leasing Vendors (to be determined through a separate SBCTA competitive procurement process). Leasing Vendors are tasked with leasing vehicles to qualified participants and collecting and reporting operations data. Leasing Vendors also are tasked with the responsibility for outreach to employers and commuters in coordination with an online web-based system (“System”) that SBCTA (to be implemented through a separate SBCTA competitive procurement process). Commuter vanpools operating that qualify for the Program and are ultimately approved, will receive a subsidy of up to \$400 per month toward the lease cost. The subsidy is provided by SBCTA and reduces the commuters’ cost of the vehicle lease and is paid directly to the Leasing Vendors.

The online web-based System will serve as a one-stop vanpool application, database and reporting system to qualify commuters for the SBCTA Vanpool Subsidy Program, assist participants with finding potential vanpool riders and allow them to log their monthly vanpool statistics to satisfy federal reporting requirements.

The SBCTA Vanpool Program will cover a large geographic area (“service area”) and complement the overall network of sister agency vanpool programs in Southern California provided by programs such as the Los Angeles County Metropolitan Transportation Authority (LA Metro), Orange County Transportation Authority (OCTA), San Diego Association of Governments (SANDAG) and Victor Valley Transit Authority (VVTA). While vanpools whose origin or destination are located in SBCTA’s service area may apply to the Program, SBCTA will only offer subsidies to qualified vanpools whose destination is located within SBCTA’s service area, unless there is a special circumstance agreed upon between the sister agencies or a subsidy is not offered for the county in which the vanpool is destined. The SBCTA Vanpool Program service area is defined as the geographic boundaries of the Cities and surrounding communities in the:

1. San Bernardino Valley: Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland and Yucaipa;
2. Mountain Communities: City of Big Bear Lake;
3. Morongo Basin: Town of Yucca Valley and City of Twentynine Palms;
4. Colorado Basin: City of Needles.

Based on the vanpools that operated in the projected service area two years ago, the Program anticipates bringing on approximately 128 vanpools by the end of the first full year of operation. Based on actual growth patterns from other sister agency vanpool programs, it is anticipated that the program could grow to 219 vanpools by the end of the third year of operation.

II. PROJECT DESCRIPTION

SBCTA is seeking a full-service marketing and branding consultant/firm/team (“Consultant”) for the development and execution of a multi-faceted branding, marketing and communications solution to contribute toward the implementation of the SBCTA Vanpool Program and website. It is the expectation of this RFP to select a Consultant capable of providing naming and branding of the Program, branding, placement, market analysis and identification, and an effective communication strategy to promote the product, project, and services of the Program, resulting in the growth of the number of vanpools for the SBCTA designated market. The goal of this RFP marketing effort is to create an identity for the project and to increase awareness of the Program and the System website, which will bring additional interest and applicants to the Program and ideally increase participation in the SBCTA Vanpool Program.

The Consultant will be asked to work in close collaboration with SBCTA staff and SBCTA consultants in the development of a branding, marketing and communications strategy for the SBCTA Vanpool Program. The Consultant will implement the branding and marketing campaign in coordination with the development of the online System and the Vanpool Program for launch (scheduled for early 2018).

SBCTA’s Vanpool Program requires a minimum 30-mile round trip, therefore the target audience for this campaign is long distance commuters commuting to SBCTA’s service area.

The Consultant selected will be tasked with evaluating a Program identity, with the creation of a branding package (digital and print) to include, but not be limited to, Program name and logos, branding tagline, introductory ad campaigns, website branding, commuter and employer Program informational pieces, and other collateral/print ready files. SBCTA does not require printing of any materials other than media advertising for this RFP.

Project Goals:

The primary goals for this RFP and the marketing campaign include but are not limited to:

1. Website and Program **name** development;
2. Develop the marketing theme “look/style”, color palette, logo(s), tag line, and graphics to provide the brand identity of the Program which would include the look and feel of the website;
3. Develop and implement a plan as to how SBCTA, the Consultant, and other SBCTA contractors working directly and indirectly on the Program can help promote, implement and build awareness of the Program and online System; and
4. Develop a plan on how to educate the public, employers and employees about vanpooling and promote vanpooling as a cost-saving, environmentally friendly, alternative transportation option.

III. WORK PLAN

Phase I: Creative Artwork Development

Consultant will work with SBCTA to develop the Program name and logo(s), branding tagline, color palette and website creative and content. The creative artwork will be used on the Program’s website and across the Program materials identified in the Marketing and Media Plan developed and implemented in Phase II. Messaging and creative content should assist the Program in establishing a forward facing image for vanpooling as a comfortable, convenient, cost-effective way for commuters to get to and from work/school. Phase I is the top priority, Consultant will be required to begin developing the products immediately following the kick-off meeting with SBCTA and work closely with the contractors developing the online software system.

Deliverables

1. Comprehensive strategy for a multifaceted brand that addresses both the online System and the SBCTA Vanpool Program that includes coordinated names, logos, service brands and slogans.
 - a. Development of a Program name.
 - b. Development of a logo(s).
 - c. Development of a branding tagline.
 - d. Development of a color palette.
 - e. Development of artwork and copywriting for Program website.

Phase II: Marketing and Media Plan Development and Implementation

Consultant will work with SBCTA to develop and implement a Marketing and Media Plan which details the campaign approach and materials to be deployed for marketing the SBCTA Vanpool Program. The plan will be influenced by the Consultant's past work and expertise in this area, as well as any relevant research/studies which analyze the marketing strategies that are likely to result in the highest level of vanpool participation. Consultant will be responsible for implementing the plan based on the schedule identified in the final plan. SBCTA recommends Consultant identify opportunities not listed and to provide suggestions for those identified. The Final Marketing and Media Plan accepted by SBCTA should include items similar but not limited to:

1. Development, implementation and production schedule.
2. Creative briefs with recommended campaign themes, concepts, messaging, and copy.
3. Artwork, graphic design, photography and copywriting to support the Plan:
 - a. Fliers, fact sheets, posters, brochures, magnetic decals (for placement on vans), postcards and letterhead
 - b. Website creative and copywriting (webpage development performed by SBCTA's System contractor)
 - c. Electronic web and email banners
4. Copywriting and creative artwork for print and digital Press Releases, advertisements, direct mail, etc., social media, public service announcements, and radio/drive-time traffic advertising opportunities where qualified leads can be generated:
 - a. Target market description and anticipated results
 - b. Summary of any past relevant research/studies which analyze the marketing strategies that are likely to generate qualified leads
 - c. Securing and managing media buys and contracts
5. Nontraditional value added opportunities such as promotions, giveaways, editorial and employer lunch 'n' learn opportunities.
6. Marketing and graphics standards manual to reinforce using the Program's identity consistently across media and other websites (such as IECCommuter.org).
7. Establish goals and targets to measure return on investment.
8. Ensure timely production and placement of creative components of the media buy.

IV. Reporting

Deliverables

1. Campaign images, with thumb drive of all raw images for System/website use.
2. Develop creative vanpool promotional materials within the framework of the System brand.

3. Final report on the results of each task identified in the Marketing and Media Plan, including backup proof (original tear sheet, ten copies of collateral item, final task budget etc.), quantitative/qualitative outcomes, including resulting goals and targets met/achieved.
4. Monthly invoices with a detailed report on work completed during the month.
5. Two (2) USB drives containing all native files for materials produced as a result of this project using a naming convention specified by SBCTA.

V. PROJECT SCHEDULE

Proposer shall outline a project schedule, to include the following, but not be limited to these suggested activities:

Contractor Task	Begin / End Dates
Brainstorming/Kick-Off Meeting with SBCTA	NTP + __ week(s)
Phase I – Draft Development of Creative Artwork	
Phase I – Final Approval of Creative Artwork	
Phase II – Draft Marketing and Media Plan	
Phase II – Final Approval of Marketing and Media Plan	
Phase II – Begin Implementation	
Final Report and Native File Delivery	

ATTACHMENT B – PRICE LIST



**Price List – Attachment B for: RFP No. 17-1001740
(Time and Materials)**

Key Personnel

Name	Classification/Title	Job Function	Hourly Rate	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	

Other Direct Cost Schedule (ODC)
All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost		Estimated Budget Amount	
	\$		\$	
	\$		\$	
	\$		\$	
	\$		\$	
	\$		\$	

Proposer

Signature of Authorized Person

Date

ATTACHMENT C – PROPOSED CONTRACT

CONTRACT No. 17-1001740

BY AND BETWEEN

SBCTA

AND

FOR

VANPOOL PROGRAM MARKETING SERVICES

This contract (referred to as “Contract”), is made and entered into by and between the San Bernardino County Transportation Authority, (“SBCTA”), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and _____ (“CONSULTANT”) whose address is: _____.SBCTA and CONSULTANT are each a “Party” and collectively the “Parties”.

RECITALS:

WHEREAS, SBCTA requires Work as described in Exhibit A of this Contract and;

WHEREAS, CONSULTANT has confirmed that CONSULTANT has the requisite professional qualifications, personnel and experience and is fully capable and qualified to perform the services identified herein; and

WHEREAS, CONSULTANT desires to perform all Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. PROJECT DESCRIPTION/SCOPE OF WORK

- 1.1 CONSULTANT agrees to perform the work and services set forth in Exhibit A “Scope of Work”, (“Work”), in accordance with all applicable professional standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined herein. The word “Work”, as used herein, includes without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, and Work imposed upon or assumed by CONSULTANT hereunder; and the Work

performed hereunder shall be completed to the satisfaction of SBCTA, with their satisfaction being based on prevailing applicable professional standards.

- 1.2 SBCTA's Project Manager for this Contract is Nicole Soto, or such other designee as shall be designated in written notice to CONSULTANT from time to time by the Executive Director of SBCTA or his or her designee. The Project Manager shall have authority to act on behalf of SBCTA in administering this Contract, including giving notices (including without limitation, notices of default and/or termination), technical directions and approvals; demanding performance and accepting work performed, but is not authorized to receive or issue payments or execute amendments to the Contract itself

ARTICLE 2. CONTRACT TERM

- 2.1 The Contract term shall commence upon issuance of a written Notice To Proceed (NTP) issued by SBCTA's Procurement Analyst and shall continue in effect through June 30, 2020, or until otherwise terminated, or unless extended as hereinafter provided by written amendment. Except that all indemnity and defense obligations hereunder shall survive termination of this Contract. CONSULTANT shall not be compensated for any work performed or costs incurred prior to issuance of the NTP.
- 2.2 SBCTA at its sole discretion may extend the original term of the Contract for two one-year option(s). The maximum term of this Contract, including the Option Term(s), if exercised, will not exceed June 30, 2022.

ARTICLE 3. COMPENSATION

- 3.1 Total compensation to CONSULTANT for full and complete performance of the Scope of Work, identified herein and, in compliance with all the terms and conditions of this Contract, shall be on a Time & Materials basis for all obligations incurred in, or application to, CONSULTANT's performance of Work, and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and Services (except as may be explicitly set forth in this Contract as furnished by SBCTA) shall not exceed the amount set forth in section 3.2 below.
- 3.2 The total Contract Not-To-Exceed Amount is (Amount) Dollars (\$_____). All Work provided under this Contract is to be performed as set forth in Exhibit A, "Scope of Work," and shall be reimbursed pursuant to Exhibit B, "Price Form." The hourly labor rates identified in Exhibit B shall remain fixed for the term of this Contract and include CONSULTANT's direct labor costs, indirect costs, and profit. All expenses shall be reimbursed for the amounts identified in Exhibit B. Any travel expenses must be pre-approved by SBCTA and shall be reimbursed for per diem expenses at a rate not to exceed the currently authorized rates for state employees under the State Department of Personnel Administration rules. SBCTA will not reimburse CONSULTANT for any expenses not shown in Exhibit B or agreed to and approved by SBCTA as required under this Contract.
- 3.3 Intentionally Omitted
- 3.4 The Cost Principles and Procedures set forth in 48 CFR, Ch. 1, subch. E, Part 31, as constituted on the effective date of this Contract shall be utilized to determine allowability of costs under this Contract and may be modified from time to time by written amendment of the Contract.
 - 3.4.1 CONSULTANT agrees to comply with Federal Department of Transportation procedures in accordance with 2 CFR, Parts 200 and 1201, Uniform Administrative Requirements,

Cost Principles, and Audit Requirements for Federal Awards.

- 3.4.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, subch. E, Part 31, or 2 CFR, Parts 200 and 1201, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, shall be repaid by CONSULTANT to SBCTA.
- 3.5 Any Work provided by CONSULTANT not specifically covered by the Scope of Work shall not be compensated without prior written authorization from SBCTA. It shall be CONSULTANT's responsibility to recognize and notify SBCTA in writing when services not covered by the Scope of Work have been requested or are required. All changes and/or modifications to the Scope of Work shall be made in accordance with the "CHANGES" Article in this Contract. Any additional services agreed to in accordance with this Contract shall become part of the Work.
- 3.6 All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE 4. INVOICING

- 4.1 Payment to CONSULTANT as provided herein shall be payable in four (4) week billing period payments, forty-five (45) calendar days after receipt of an acceptable invoice by SBCTA of an invoice prepared in accordance with instructions below. Payment shall not be construed to be an acceptance of Work.
- 4.2 CONSULTANT shall prepare invoices in a form satisfactory to and approved by SBCTA, and it shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four-week billing period and will be marked with SBCTA'S contract number, description and task order number, if applicable. Invoices shall be submitted within fifteen (15) calendar days for the period covered by the invoice. Invoices shall include request for payment for Work (including additional services authorized by SBCTA) completed by CONSULTANT during each billing period and shall include back-up information sufficient to establish the validity of the invoice. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT's sole expense. The final invoice shall be marked "FINAL" and will be submitted within 60 calendar days after SBCTA has received and approved all Work and deliverables. Invoices should be e-mailed to SBCTA at the following address:
ap@gosbcta.com
- 4.3 CONSULTANT shall include a statement and release with each invoice, satisfactory to SBCTA, that CONSULTANT has fully performed the Work invoiced, pursuant to the Contract for the period covered, that all information included with the invoice is true and correct and that all payments to and claims of CONSULTANT and its subconsultants for Work during the period will be satisfied upon making of such payment. SBCTA shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.
- 4.4 Intentionally Omitted
- 4.5 No payment will be made prior to approval of any Work, nor for any Work performed prior to the NTP or the issuance of an applicable CTO, nor for any Work under any amendment to the Contract until SBCTA's Awarding Authority takes action.

- 4.6 CONSULTANT agrees to promptly pay each subconsultant for the satisfactory completion of all Work performed under this Contract, no later than ten (10) calendar days from the receipt of payment from SBCTA. CONSULTANT also agrees to return any retainage payments to each subconsultant within ten (10) calendar days after the subconsultants work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval by SBCTA. SBCTA reserves the right to request documentation from CONSULTANT showing payment has been made to its subconsultants. SBCTA also reserves the right, at its own sole discretion, to issue joint checks to CONSULTANT and any subconsultant(s), which shall constitute payment to CONSULTANT in compliance with the terms of this Contract. This clause applies to both DBE and non-DBE subconsultants.
- 4.7 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, subch. E, Part 31 are subject to repayment by CONSULTANT to SBCTA.

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONSULTANT shall pay when due, and the compensation set forth herein 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 CONSULTANT; and d) other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT 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 CONSULTANT, 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, which will or may be affected by a shortage of funds, it will promptly notify CONSULTANT. Nothing herein shall relieve SBCTA from its obligation to compensate CONSULTANT 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

CONSULTANT shall, without additional compensation, keep current all governmental permits, certificates and licenses (including professional licenses) and required registrations necessary for CONSULTANT to perform Work identified herein.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

- 8.1 CONSULTANT 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, or until the conclusion of all litigation, appeals or claims related to this Contract, whichever is longer. CONSULTANT shall provide SBCTA, Federal Transit Administration, the California State Auditor, or other authorized representatives of SBCTA, access to CONSULTANT's records which are directly related to this Contract for the purpose of inspection, auditing or copying during the entirety of the records maintenance period above. CONSULTANT further agrees to maintain separate records for costs of Work performed by amendment. CONSULTANT shall allow SBCTA, and its representatives

or agents to reproduce any materials as reasonably necessary.

8.2 The cost proposal and/or invoices for this Contract are subject to audit by SBCTA and/or any state or federal agency funding this Project at any time. After CONSULTANT receives any audit recommendations, the cost proposal shall be adjusted by CONSULTANT and approved by SBCTA's Project Manager to conform to the audit recommendations. CONSULTANT agrees that individual items of cost identified in the audit report may be incorporated into the Contract at SBCTA's sole discretion. Refusal by CONSULTANT to incorporate the audit or post award recommendations will be considered a breach of the Contract and cause for termination of the Contract. Any dispute concerning the audit findings of this Contract shall be reviewed by SBCTA's Chief Financial Officer. CONSULTANT may request a review by submitting the request in writing to SBCTA within thirty (30) calendar days after issuance of the audit report.

8.3 Subcontracts in excess of \$25,000 shall contain the provisions in this Article.

ARTICLE 9. RESPONSIBILITY OF CONSULTANT

9.1 CONSULTANT shall be responsible for the professional quality, technical accuracy, and the assurance of compliance with all applicable federal, State, and local laws and regulations, and other Work furnished by the CONSULTANT under the Contract. The Contract includes reference to the appropriate standards for design or other standards for Work performance stipulated in the Contract.

9.2 In addition to any other requirements of this Contract or duties and obligations imposed on CONSULTANT by law, CONSULTANT shall, as an integral part of its Work, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality and safety of the Project and the Work performed by CONSULTANT within the areas of CONSULTANT's expertise. At any time during performance of the Scope of Work, should CONSULTANT observe, encounter, or identify any unusual circumstances or uncertainties, which could pose potential risk to SBCTA or the Project, CONSULTANT shall immediately document such matters and notify SBCTA in writing. CONSULTANT shall also similarly notify SBCTA in regard to the possibility of any natural catastrophe, potential failure, or any situation that exceeds environmental, design, and/or construction assumptions and could precipitate a failure of any structure or other part of the Project. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SBCTA to understand and evaluate the magnitude and effect of the risk and/or uncertainties involved.

9.3 Intentionally Omitted

9.4 SBCTA shall advise CONSULTANT of their responsibility and collect the amount due, including but not limited to, withholding of payments, if the recoverable cost will exceed the administrative cost involved or is otherwise in SBCTA's best interest. SBCTA shall include in the Contract Audit File a written statement of the reasons for the decision to recover or not recover the costs from CONSULTANT.

9.5 CONSULTANT shall, document the results of the Work to the satisfaction of SBCTA and if applicable, Federal Transit Administration (FTA) and California Public Utilities Commission (CPUC). This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of SBCTA's objectives.

9.6 Intentionally Omitted

9.7 Intentionally Omitted

ARTICLE 10. REPORTING AND DELIVERABLES

All reports and deliverables shall be submitted in accordance with Exhibit A, "Scope of Work." At a minimum, CONSULTANT shall submit monthly progress reports with their monthly invoices. The progress reports shall be sufficiently detailed for SBCTA to determine if the CONSULTANT is performing to expectations or is on schedule to provide communication of interim findings, and to sufficiently address any difficulties or problems encountered, so remedies can be developed.

ARTICLE 11. TECHNICAL DIRECTION

11.1 Performance of Work under this Contract shall be subject to the technical direction of SBCTA's Project Manager. The term "Technical Direction" is defined to include, without limitation:

11.1.1 Directions to CONSULTANT, which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Scope of Work.

11.1.2 Provision of written information to CONSULTANT, which assists in the interpretation of drawings, reports, or technical portions of the Scope of Work described herein.

11.1.3 Review and, where required by the Contract, approval of technical reports, drawings, specifications and technical information to be delivered by CONSULTANT to SBCTA under the Contract.

11.1.4 SBCTA's Project Manager may modify this Contract for certain administrative modifications without issuing a written amendment. Administrative modifications as defined herein are limited to: substitutions of personnel identified in this Contract, including Key Personnel and subconsultants; modifications to hourly rates, classifications, and names of personnel in Exhibit B; and modifications of the address of the CONSULTANT. All administrative modifications shall be documented in writing between the Parties.

11.2 Technical Direction must be within the Scope of Work under this Contract. SBCTA's Project Manager does not have the authority to, and may not, issue any Technical Direction which:

11.2.1 Increases or decreases the Scope of Work;

11.2.2 Directs CONSULTANT to perform Work outside the original intent of the Scope of Work;

11.2.3 Constitutes a change as defined in the "CHANGES" Article of the Contract;

11.2.4 In any manner causes an increase or decrease in the Contract price as identified in Article 3, herein, or the time required for Contract performance;

11.2.5 Changes any of the expressed terms, conditions or specifications of the Contract; unless identified herein;

11.2.6 Interferes with the CONSULTANT's right to perform the terms and conditions of the Contract; or

11.2.7 Approves any demand or claim for additional payment.

- 11.3 Failure of CONSULTANT and SBCTA's Project Manager to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken shall be subject to the provisions of the "DISPUTES" Article herein.
- 11.4 All Technical Direction shall be issued in writing by SBCTA's Project Manager.
- 11.5 CONSULTANT shall proceed promptly with the performance of Technical Direction issued by SBCTA's Project Manager, in the manner prescribed by this Article and within their authority under the provisions of this Article. If, in the opinion of CONSULTANT, any instruction or direction by SBCTA's Project Manager falls within one of the categories defined in 11.2.1 through 11.2.7 above, CONSULTANT shall not proceed but shall notify SBCTA in writing within five (5) working days after receipt of any such instruction or direction and shall request SBCTA to modify the Contract accordingly. Upon receiving the notification from the CONSULTANT, SBCTA shall:
- 11.5.1 Advise CONSULTANT in writing within thirty (30) calendar days after receipt of the CONSULTANT's letter that the Technical Direction is or is not within the scope of this Contract.
- 11.5.2 Advise CONSULTANT within a reasonable time whether SBCTA will or will not issue a written amendment.

ARTICLE 12. CHANGES

- 12.1 The Work shall be subject to changes by additions, deletions, or revisions made by SBCTA. CONSULTANT will be advised of any such changes by written notification from SBCTA describing the change. This notification will not be binding on SBCTA until SBCTA's Awarding Authority has approved any amendment to this Contract.
- 12.2 Promptly after such written notification of change is given to CONSULTANT by SBCTA, the Parties will attempt to negotiate a mutually agreeable adjustment to compensation or time of performance, and amend the Contract accordingly.

ARTICLE 13. CONFLICT OF INTEREST

CONSULTANT agrees that it presently has no interest, financial or otherwise and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or be contrary to the interests of SBCTA as to the Project. CONSULTANT further agrees that in the performance of this Contract no person having any such interest shall be employed. CONSULTANT is obligated to fully disclose to SBCTA, in writing, any conflict of interest issues as soon as they are known to CONSULTANT. CONSULTANT agrees that CONSULTANT's staff designated by SBCTA's Executive Director as "Consultants" under the Political Reform Act shall timely file Statements of Economic Interest with the SBCTA Clerk of the Board.

ARTICLE 14. KEY PERSONNEL

The personnel specified below are considered to be essential to the Work being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Work that are the responsibility of key personnel to other personnel, CONSULTANT shall notify SBCTA in writing in advance and shall submit justifications (including proposed substitutions, resumes and payroll information to support any changes to the labor rate) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of key personnel shall not be made without prior written consent of SBCTA. CONSULTANT shall not substitute any key personnel without

the prior written consent of SBCTA. In the event that the Parties cannot agree as to the substitution of key personnel, SBCTA may terminate the Contract. Key Personnel are:

Name	Job Classification/Function

ARTICLE 15. REPRESENTATIONS

All Work supplied by CONSULTANT under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that they are supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with SBCTA that the same shall conform to professional and engineering and environmental principles and standards that are generally accepted in the profession in the State of California.

ARTICLE 16. PROPRIETARY RIGHTS/CONFIDENTIALITY

- 16.1 If, as part of this Contract, CONSULTANT is required to produce materials, documents data, or information (“Products”), then CONSULTANT, if requested by SBCTA, shall deliver to SBCTA the original of all such Products in the format prescribed by SBCTA in Exhibit A, “Scope of Work,” which shall become the sole property of SBCTA.
- 16.2 All materials, documents, data or information obtained from SBCTA's data files or any SBCTA-owned medium furnished to CONSULTANT 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 CONSULTANT without the express written consent of SBCTA.
- 16.3 Except as reasonably necessary for the performance of the Work, CONSULTANT agrees that it, its employees, agents and subconsultants will hold in confidence and not divulge to third parties without prior written consent of SBCTA, any information obtained by CONSULTANT from or through SBCTA unless (a) the information was known to CONSULTANT prior to obtaining same from SBCTA pursuant to a prior contract; or (b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes, part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subconsultants, or (c) the information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to CONSULTANT's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONSULTANT, until released in writing by SBCTA, except to the extent such materials and information become subject to disclosure by SBCTA under the California Public Records Act or other law, or otherwise become public information through no fault of CONSULTANT, or its employees or agents.
- 16.4 CONSULTANT shall not use SBCTA’s name or photographs in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA.
- 16.5 All press releases or press inquiries 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.

ARTICLE 17. CONSTRUCTION CLAIMS.

Intentionally Omitted

ARTICLE 18. TERMINATION

- 18.1 Termination for Convenience – SBCTA’s Executive Director 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 CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall promptly discontinue performance of Work 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.
- 18.1.1 CONSULTANT shall deliver to SBCTA, all deliverables prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA. Upon such delivery, CONSULTANT may then invoice SBCTA for payment in accordance with the terms herein.
- 18.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from SBCTA as complete and full settlement for such termination a pro rata share of the Contract cost based upon the percentage of all contracted Work satisfactorily executed to the date of termination.
- 18.1.3 CONSULTANT shall be entitled to receive the actual costs incurred by CONSULTANT to return CONSULTANT’s 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.
- 18.2 Termination for Cause - In the event CONSULTANT 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 shall be filed against CONSULTANT or a receiver shall be appointed on account of its insolvency, or if CONSULTANT 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, and in compliance with applicable Bankruptcy Laws: (a) hold in abeyance further payments to CONSULTANT; (b) stop any Work of CONSULTANT or its subconsultants related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by SBCTA, SBCTA may take possession of the Products and finished Work by whatever method SBCTA may deem expedient.
- 18.2.1 A waiver by SBCTA of one default of CONSULTANT shall not be considered to be a waiver of any subsequent default of CONSULTANT, of the same or any other provision, nor be deemed to waive, amend, or modify this Contract.
- 18.2.2 CONSULTANT shall deliver to SBCTA all finished and unfinished deliverables under this Contract prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA within ten (10) working days of said notice.

18.3 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 CONSULTANT be entitled to any payment for prospective profits on unperformed services or any damages because of such termination. All subcontracts in excess of \$25,000 shall contain the above provisions of this Article.

ARTICLE 19. STOP WORK ORDER

Upon failure of CONSULTANT or its subconsultants to comply with any of the 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 For Cause provisions of this Contract.

ARTICLE 20. 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 CONSULTANT for any claim asserted by CONSULTANT after final payment has been made under this Contract.

ARTICLE 21. INSURANCE

21.1 Prior to commencing the Work, at all times during the performance of the Work and for such additional periods as required herein, CONSULTANT shall, at CONSULTANT's sole expense, procure and maintain insurance coverage with the following minimum requirements, and shall require all subcontractors of every tier performing any of the Work to procure and maintain such insurance specified below:

21.1.1 Professional Liability – The policies must include the following:

- \$1,000,000 per claim limits
- \$3,000,000 in the aggregate for all claims.
- If Coverage is on a claims made basis:
 - Policy shall contain a retroactive date for coverage of prior acts, this date will be prior to the date the CONSULTANT begins to perform Work under this Contract.
 - CONSULTANT shall secure and maintain “tail” coverage for a minimum of (3) years after Contract completion.

21.1.2 Worker's 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 CONSULTANT or any subconsultant of any tier. All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONSULTANT and all parties named as Indemnitees below. SBCTA and CONSULTANT 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. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

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

- \$2,000,000 per occurrence limit/\$4,000,000 in the aggregate for property damage or bodily injury
- \$1,000,000 per occurrence limit/\$2,000,000 in the aggregate for personal injury and advertising injury
- \$2,000,000 per occurrence limit for products/completed operations coverage. CONSULTANT shall maintain products and completed operations coverage for 10 years following the acceptance of Work or until all applicable statutes of limitations expire, whichever length of time is longer. Coverage is to be on an “occurrence” form. “Claims made” and “modified occurrence” forms are not acceptable.
- An endorsement stating that any aggregate limits apply on a “per project” and on a “per location” basis.
- The project name must be indicated under “Description of Operations/Locations.”
- The policy shall be endorsed to provide: “This insurance will be primary and noncontributory with any other insurance of the additional insureds.”

All commercial general liability insurance policies shall also include premises-operations (including explosion, collapse and underground coverage) and products-completed operations coverage; severability of interests (full separation of insureds); contractual liability coverage (including coverage to the maximum extent possible for the indemnifications contained in this Contract); broad form property damage coverage (including completed operations); and a duty to defend in addition to (without reducing) the limits of the policy(ies). All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the commercial general liability insurance coverage with limits not less than:

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

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

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

- \$5,000,000 umbrella or excess liability for any project with a Contract value of \$25,000,000 or less.
- Combined total for Commercial General Liability and Excess Liability limits of \$25,000,000 will be required for projects with a Contract value in excess of \$25,000,000.
- The umbrella or excess policy shall follow form over the CONSULTANT’s primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
- The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
- The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in

the event the primary limits are impaired or exhausted.

21.1.5 Commercial Auto Insurance The policy must include the following:

- Auto Liability limits of not less than \$5,000,000 each accident
- Combined Bodily Injury and Property Damage Liability insurance
- Coverage must include owned autos, hired or non-owned autos

The commercial automobile liability insurance shall be written on the most recent edition of ISO form CA 00 01 or equivalent acceptable to SBCTA and shall include, without limitation, contractual liability coverage and additional insured status for the Additional Insureds named below. CONSULTANT waives all rights of subrogation against the Additional Insureds named below, for recovery of loss, injury and/or damages to the extent such loss, injury and/or damages are covered by the commercial automobile liability insurance required herein. All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with the same waiver of subrogation in favor of all parties named as Additional Insureds below, and CONSULTANT.

21.1.6 Pollution Liability

Intentionally Omitted

21.1.7 Railroad Protective Liability

Intentionally Omitted

21.2 General Provisions

21.2.1 Qualifications of Insurance Carriers. All policies written by insurance carriers shall be authorized and admitted to do business in the state of California with a current A.M. Best rating of A-VIII or better. Professional Liability and Contractor's Pollution Liability policies may be from non-admitted carriers provided they are authorized and licensed in the state of California and meet the current A.M. Best rating of A: VIII or better.

21.2.2 Additional Insurance Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, shall name San Bernardino County Transportation Authority, and its officers, directors, members, employees, agents and volunteers, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONSULTANT under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability but shall allow coverage for SBCTA to the full extent provided by the policy.

21.2.3 Proof of Coverage. Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including 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, CONSULTANT shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.

- 21.2.4 Deductibles. Regardless of the allowance of exclusions or deductibles by SBCTA, CONSULTANT shall be responsible for any deductible amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONSULTANT will pay, and shall require its subconsultants to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. All deductibles will be in amounts acceptable to SBCTA's Risk Manager. CONSULTANT will advise SBCTA in writing as to the amounts of any deductible, or as to any increase in any insurance deductible under any insurance required above. There will be no deductibles in excess of \$250,000 per occurrence, loss or claim under the insurance. There shall be no self-insured retention. SBCTA will have the right, but not the obligation, to pay any deductible 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 CONSULTANT. The policies shall not provide that any deductible, or other payment required under the policy can be paid only by the named insured, and not by an additional insured.
- 21.2.5 CONSULTANT's and Subconsultants' Insurance will be Primary. All policies required to be maintained by the CONSULTANT or any subconsultant with the exception of Professional Liability and Worker's Compensation shall be endorsed to be primary coverage, and any coverage carried by any of the Additional Insureds named herein shall be excess and non-contributory. Further, none of CONSULTANT's or subconsultants' 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.
- 21.2.6 Waiver of Subrogation Rights. To the fullest extent permitted by law, CONSULTANT hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other consultant, subconsultant or sub-subconsultant 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, CONSULTANT shall require similar written express waivers and insurance clauses from each of its subconsultants of every tier. CONSULTANT shall require all of the policies and coverages required in this Article to waive all rights of subrogation against the Additional Insureds. Such insurance and coverages provided shall not prohibit CONSULTANT from waiving the right of subrogation prior to a loss or claim.
- 21.2.7 Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, CONSULTANT will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONSULTANT will provide SBCTA ten (10) days prior written notice. In any event, CONSULTANT will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONSULTANT receives within one business day after CONSULTANT receives it by submitting it to SBCTA at procurement@gosbcta.com to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.
- 21.2.8 Enforcement. SBCTA may take any steps as are necessary to assure CONSULTANT's compliance with its insurance obligations as identified within this Article. Failure to

continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONSULTANT fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONSULTANT or withhold such expense from amounts owed CONSULTANT, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONSULTANT of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONSULTANT for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONSULTANT, or any subconsultant 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.

21.2.9 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.

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

21.2.11 Higher limits. If CONSULTANT maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.

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

ARTICLE 22. INDEMNITY

22.1 Intentionally Omitted.

22.2 For all other Work, CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SBCTA) and hold harmless the Indemnitees, from any and all claims, actions, losses, damages and/or liability ("Claims") arising out of or related to any act or omission of consultant or any of its officers, employees, agents, subconsultants or volunteers and for any costs or expenses incurred by SBCTA on account of any such Claims except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees.

ARTICLE 23. ERRORS AND OMISSIONS

CONSULTANT shall be responsible for the professional quality, technical accuracy, and coordination of all Work required under this Contract. CONSULTANT shall be liable for SBCTA's costs resulting from errors or deficiencies in Work furnished under this Contract, including but not limited to any fines,

penalties, damages, and costs associated with a modification to a construction contract required because of an error or deficiency in the Work provided by CONSULTANT under this Contract.

ARTICLE 24. OWNERSHIP OF DOCUMENTS

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

ARTICLE 25. SUBCONTRACTS

- 25.1 CONSULTANT shall not subcontract performance of all or any portion of Work under this Contract, except to those subconsultants listed in the CONSULTANT's proposal, without first notifying SBCTA, in writing of the intended subcontracting and obtaining SBCTA's written approval of the subcontracting and the subconsultant. The definition of subconsultant and the requirements for subconsultants hereunder shall include all subcontracts at any tier.
- 25.2 CONSULTANT agrees that any and all subconsultants of CONSULTANT performing Work under this Contract will comply with the terms and conditions of this Contract applicable to the portion of Work performed by them. CONSULTANT shall incorporate all applicable provisions of this Contract into their subcontracts regardless of the tier. If requested by SBCTA, CONSULTANT shall furnish SBCTA a copy of the proposed subcontract for SBCTA's approval of the terms and conditions thereof and shall not execute such subcontract until SBCTA has approved such terms and conditions. SBCTA's approval shall not be unreasonably withheld.
- 25.3 Approval by SBCTA of any Work to be subcontracted and the subconsultant to perform said Work will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said Work. Any substitution of subconsultants must be approved in writing by SBCTA. CONSULTANT shall have the sole responsibility for managing of their subconsultants, including resolution of any disputes between CONSULTANT and its subconsultants.

ARTICLE 26. INSPECTION OF OPERATIONS

SBCTA, or any of its designees, representatives or agents shall at all times have access during normal business hours to CONSULTANT's operations and products wherever they are in preparation or progress, and CONSULTANT 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 their rights to require CONSULTANT to comply with the Contract or to subsequently reject unsatisfactory Work or products.

ARTICLE 27. INDEPENDENT CONTRACTOR

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

ARTICLE 28. ATTORNEYS' 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 attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

ARTICLE 29. 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 agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

ARTICLE 30. FEDERAL, STATE AND LOCAL LAWS

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

ARTICLE 31. PRECEDENCE

- 31.1 The Contract consists of the Contract Articles, Exhibit A, "Scope of Work," and Exhibit B, "Cost Proposal," SBCTA's Request For Proposal, and CONSULTANT's proposal, all of which are incorporated in this Contract by this reference.
- 31.2 The following order of precedence shall apply: first, the Contract Articles; second, Exhibits A and B; third, SBCTA's Request For Proposal; and last, CONSULTANT's Proposal. In the event of a conflict between the Contract Articles and the Scope of Work, the Contract Articles will prevail.
- 31.3 In the event of an express conflict between the documents listed in this Article, or between any other documents, which are a part of the Contract, CONSULTANT shall notify SBCTA in writing within three (3) business days of its discovery of the conflict and shall comply with SBCTA's resolution of the conflict.

ARTICLE 32. COMMUNICATIONS AND NOTICES

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

To CONSULTANT	To SBCTA
	1170 W. 3rd Street, 2nd Floor
	San Bernardino, CA 92410-1715
Attn:	Attn: Nicole Soto, Project Manager
	cc: Procurement Manager
Phone:	Phone: (909) 884-8276
Email:	nsoto@gosbcta.com

ARTICLE 33. DISPUTES

- 33.1 In the event any dispute, other than an audit, arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, Work to be performed, Scope of Work and/or time of performance), the dispute shall be decided by SBCTA's Procurement Manager within thirty (30) calendar days after written notice of the dispute, which shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have ten (10) calendar days after receipt of the decision in which to file a written appeal with SBCTA's Executive Director. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such dispute is appealable to a court of competent jurisdiction.
- 33.2 During resolution of the dispute, CONSULTANT shall proceed with performance of the Contract with due diligence.

ARTICLE 34. GRATUITIES

CONSULTANT, its employees, agents, or representatives shall not offer or give to any officer, official, agent or employee of SBCTA, any gift, entertainment, payment, loan, or other gratuity.

ARTICLE 35. REVIEW AND ACCEPTANCE

All Work performed by CONSULTANT shall be subject to periodic review and approval by SBCTA at any and all places where such performance may be carried on. Failure of SBCTA to make such review, or to discover defective work, shall not prejudice the rights of SBCTA at the time of final acceptance. All Work performed by CONSULTANT shall be subject to periodic and final review and acceptance by SBCTA upon completion of all Work.

ARTICLE 36. CONFIDENTIALITY

Any SBCTA communications or materials to which CONSULTANT or its subconsultants or agents have access, or materials prepared by CONSULTANT under the terms of this Contract, shall be held in confidence by CONSULTANT, who shall exercise reasonable precautions to prevent the disclosure of confidential information to anyone except as expressly authorized by SBCTA. Any communications with or work product of SBCTA's legal counsel to which CONSULTANT or its subconsultants or agents have access in performing work under this Contract shall be subject to the attorney-client privilege and attorney work product doctrine, and shall be confidential. CONSULTANT shall not release any reports, information or promotional material or allow for the use of any photos related to this Contract for any purpose without prior written approval of SBCTA.

ARTICLE 37. EVALUATION OF CONSULTANT

CONSULTANT's performance may be evaluated by SBCTA periodically throughout the Contract performance period, such as at the completion of certain milestones as identified in Exhibit A and/or at the completion of the Contract. A copy of the evaluation will be given to CONSULTANT for their information. The evaluation information shall be retained as part of the Contract file and may be used to

evaluate CONSULTANT if they submit a proposal on a future RFP issued by SBCTA.

ARTICLE 38. SAFETY

CONSULTANT shall strictly comply with all OSHA regulations, local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT's operations in the performance of Work under this Contract

ARTICLE 39. DRUG FREE WORKPLACE

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

ARTICLE 40. ASSIGNMENT

CONSULTANT shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of SBCTA. SBCTA's exercise of consent shall be within its sole discretion. Any purported assignment without SBCTA's prior written consent shall be void and of no effect, and shall constitute a material breach of this Contract. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

ARTICLE 41. DEBARMENT AND SUSPENSION CERTIFICATION

41.1 This Contract is a covered transaction for purposes of 2 CFR Part 180, as supplemented by 2 CFR Part 1200. As such, CONSULTANT verifies that none of the CONSULTANT, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940 and 180.935. CONSULTANT is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with the requirements of 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

41.2 By signing this Contract CONSULTANT certifies as follows:

This certification is a material representation of fact relied upon by SBCTA. If it is later determined that CONSULTANT knowingly rendered an erroneous certification, in addition to remedies available to SBCTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. CONSULTANT agrees to comply with the requirements of 2 CFR 180, Subpart C throughout the term of this Contract and to include a provision requiring such compliance in its lower tier covered transactions.

ARTICLE 42. PREVAILING WAGE RATES

Intentionally Omitted

ARTICLE 43. CONTINGENT FEE

CONSULTANT warrants, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, SBCTA has the right to terminate the Contract without liability, pay only for the value of the Work actually performed, or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 44. FORCE MAJEURE

CONSULTANT shall not be in default under this Contract in the event that the Work performed by CONSULTANT 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, and natural disasters such as floods, earthquakes, landslides, and fires, or other catastrophic events which are beyond the reasonable control of CONSULTANT and which CONSULTANT could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the financial inability of CONSULTANT to perform or failure of CONSULTANT to obtain either 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 CONSULTANT.

ARTICLE 45. WARRANTY

CONSULTANT warrants that all Work performed shall be in accordance with the Contract, and all applicable professional standards. In the event of a breach of this provision, CONSULTANT shall take the necessary actions to correct the breach at CONSULTANT's sole expense. If CONSULTANT does not take the necessary action to correct the breach, SBCTA, without waiving any other rights or remedies it may have, may take the necessary steps to correct the breach, and CONSULTANT shall promptly reimburse SBCTA for all expenses and costs incurred.

ARTICLE 46. CIVIL RIGHTS

46.1 Nondiscrimination. During the term of this Contract, CONSULTANT shall not willfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, gender, marital status, sexual orientation, age, political affiliation or disability. CONSULTANT agrees to comply with the provisions of Title VI of the Civil Rights Act, as amended, 42 U.S.C. sec. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. sec. 6102, section 202 of the Americans With Disabilities Act of 1990, 42 U.S.C. sec. 12132 and Federal transit law at 49 U.S.C. sec. 5332, and other applicable Federal, State and local laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted. In addition, CONSULTANT agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

46.2 Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Contract.

46.2.1 Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. sec. 2000e et seq., and Federal transit laws at 49 U.S.C. sec. 5332, CONSULTANT agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaking in the course of the Project. CONSULTANT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation;

and selection for training, including apprenticeship. In addition, CONSULTANT agrees to comply with any implementing requirement FTA may issue.

46.2.2 Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. sec. 623, and Federal transit law at 49 U.S.C. sec. 5332, CONSULTANT agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue.

46.2.3 Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C, sec. 12112, CONSULTANT agrees that it will comply with the requirement of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue.

46.3 CONSULTANT shall include the requirements of this Article in each of its subcontracts.

ARTICLE 47. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

Intentionally Omitted

ARTICLE 48. CONFLICT OF INTEREST

48.1 CONSULTANT shall disclose any financial, business, or other relationship with SBCTA that may have an impact upon the outcome of this Contract, or any ensuing SBCTA construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Contract, or any ensuing SBCTA construction project, which will follow.

48.2 CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Contract.

48.3 Any subcontract in excess of \$25,000 entered into as a result of this Contract, shall contain all of the provisions of this Article.

48.4 Intentionally Omitted

48.5 Intentionally Omitted

48.6 Intentionally Omitted

ARTICLE 49. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

CONSULTANT warrants that this Contract was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any SBCTA employee. For breach or violation of this warranty, SBCTA shall have the right in its discretion: to terminate the contract without liability; to pay only for the value of the Work actually performed; or to deduct from the Contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE 50. PROHIBITION OF EXPENDING SBCTA, STATE OR FEDERAL FUNDS FOR LOBBYING

50.1 CONSULTANT certifies, to the best of his or her knowledge and belief, that:

50.1.1 No state, federal or local agency appropriated funds have been paid, or will be paid, by or on behalf of CONSULTANT, to any person for influencing or attempting to influence an officer or employee of an agency, Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract, the making of any state or federal grant, the making of any state or federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, or loan, or cooperative agreement.

50.1.2 If any funds other than federal appropriated funds have been paid, or will be paid to any person for making lobbying contacts to, influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

50.3 CONSULTANT shall require that the language of this Article be included in all lower-tier subcontracts, which exceed \$100,000, and that all such subconsultants shall certify and disclose accordingly.

ARTICLE 51. INCORPORATION OF FTA TERMS

All contractual provisions required by Department of Transportation (DOT) as set forth in Federal Transit Administration (FTA) Circular 4220.1F, as amended, whether or not expressly set forth in this Contract, are hereby incorporated by reference into this Contract. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any SBCTA requests, which would cause the designated recipient, subrecipient or SBCTA to be in violation of the FTA terms and conditions. If SBCTA determines that a Contract amendment expressly setting forth FTA required terms is convenient or necessary for SBCTA's receipt or use of FTA funding for this Contract or the Project, CONSULTANT agrees to promptly execute such an amendment to this Contract. CONSULTANT's failure to execute such amendment within ten business days after SBCTA provides CONSULTANT with such amendment shall be a material breach of this Contract.

ARTICLE 52. FEDERAL CHANGES

CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement between direct recipient or subrecipient and FTA, as they may be amended or promulgated from time to time during the term of this Contract. CONSULTANT's failure to comply shall constitute a material breach of this contract.

ARTICLE 53. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

SBCTA and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to SBCTA, CONSULTANT, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from the underlying Contract. CONSULTANT agrees to include these requirements in all of its subcontracts.

ARTICLE 54. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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

54.2 CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this Contract connected with a project that is financed in whole or part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307 *et seq.*, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307 *et seq.* on CONSULTANT, to the extent the Federal Government deems appropriate.

54.3 CONSULTANT shall include the requirements of this Article in all of its subcontracts.

ARTICLE 55. RECYCLED PRODUCTS

CONSULTANT shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. sec. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, as it applies to the procurement of the items designated in Subpart B of 40 CFR Part 247. CONSULTANT agrees to include this requirement in all of its subcontracts.

ARTICLE 56. ENERGY CONSERVATION REQUIREMENTS

CONSULTANT shall comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

ARTICLE 57. CLEAN AIR

CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* CONSULTANT shall report each violation to SBCTA, who will in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONSULTANT agrees to include this requirement in all of its subcontracts which exceed \$100,000.

ARTICLE 58. CLEAN WATER REQUIREMENTS

CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. sec. 1251 et seq. CONSULTANT shall report each violation to SBCTA and understands and agrees that SBCTA who will, in turn, report each violation as required to assure notification to FTA and appropriate EPA Regional Office. CONSULTANT agrees to include this requirement in all of its subcontracts which exceed \$100,000.

ARTICLE 59. FLY AMERICA REQUIREMENTS

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

ARTICLE 60. SEISMIC SAFETY REQUIREMENTS

Intentionally Omitted

ARTICLE 61. DISADVANTAGED BUSINESS ENTERPRISE

SBCTA, as the sub-recipient of federal funds is required to comply with any requirements established by the main recipient (Omnitrans) to involve Disadvantaged Business Enterprises (DBEs) to the maximum extent feasible in all phases of its procurement practices. The VENDOR must certify that it has complied with the requirements of 49 CFR Part 26. The VENDOR shall have on file with the FTA an approved or non-disapproved annual DBE subcontracting participation goal program.

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

The VENDOR shall supply sufficient information in its payment applications and supporting documentation to enable SBCTA and the FTA to assess whether VENDOR is complying with its DBE goals. The VENDOR shall comply with its FTA approved or non-disapproved DBE goal program.

ARTICLE 62. ENTIRE DOCUMENT

- 62.1 This Contract constitutes the sole and only agreement governing the Work and supersedes any prior understandings, written or oral, between the Parties respecting the Project. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been expressly incorporated into this Contract.
- 62.2 No agent, official, employee or representative of SBCTA has any authority to bind SBCTA to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.

62.3 Both Parties have been represented or had the full opportunity to be represented by legal counsel of their own choosing in the negotiation and preparation of this Contract. Therefore, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

ARTICLE 63. CONTRACT

CONSULTANT and SBCTA agree that this Contract constitutes the entire agreement made, and concluded in duplicate, between the two Parties. Both Parties, for and in consideration of the payments to be made, conditions mentioned, and work to be performed, agree to diligently perform in accordance with the terms and conditions of this Contract as evidenced by the signatures below.

ARTICLE 64. EFFECTIVE DATE

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

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

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the day and year written below.

CONSULTANT

SBCTA

By: _____
Name
Title

By: _____
Robert A. Lovingood
President, Board of Directors

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____
Julianna K. Tillquist
Assistant General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Procurement Manager

EXHIBIT A- “SCOPE OF WORK” – ADDED TO FINAL CONTRACT

EXHIBIT B—“APPROVED COST PROPOSAL” – ADDED TO FINAL CONTRACT

ATTACHMENT C- RFP FORMS

NON-LOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS

I, _____(Firm Name) as the proposer certifies, by signing and submitting this proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds, other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in conformance with its instructions.

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

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

Executed this _____ day of _____, 2017

By: _____
Signature of Proposer's authorized official

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

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

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

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

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

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material changes For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI)	b. Individuals Performing Services (including address if different from No 10a) (last name, first name, MI):	
(attach Continuation Sheet(s) SF - LLL - A if necessary)		
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other specify: _____	
12. Forum of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify nature: _____ value: _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s) or Member(s) contracted for Payment indicated in Item, 11: (attach Continuation Sheet(s) SF-LLL-A if necessary)		
16. Information requested through this form is authorized by Code 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.	Signature: _____ Print name: _____ Title: _____ Telephone No: _____ Date: _____	

DISCLOSURE OF LOBBYING ACTIVITIES (Continuation Sheet)

Reporting Entity: _____

Page _____ of _____

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INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION TITLE 2, CODE OF FEDERAL REGULATIONS, PARTS 180 AND 1201

Each proposer shall complete the "Certification of Debarment, Suspension and other Responsibility Matters" included in this RFP for itself and its principals, and submit the certification with its proposal. Failure to submit the certification may result in the rejection of the proposal.

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

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

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

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

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

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

The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 2 CFR part 180, subpart H, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

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

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

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

Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more -2 CFR 180.220(b) and 2 CFR 1200.220).

By signing and submitting this proposal, the prospective lower tier (subconsultant) is providing the certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

The prospective lower tier participant shall provide immediate written notice to SBCTA if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

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

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

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

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in

addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

The _____

Firm Name/Principal

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

1. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
2. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local), with commission of any of the offenses enumerated in paragraph 2 herein; and
4. Have not within a three-year period preceding this proposal had one or more public transaction (federal, state or local) terminated for cause or default.

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

THE PRIMARY PARTICIPANT _____

Firm Name/Principal

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

Signature and Title of Authorized Official: _____

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
INELIGIBILITY AND VOLUNTARY EXCLUSION –
LOWER TIER COVERED TRANSACTIONS**

The _____

Firm Name/Principal

Certifies by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency.

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

THE LOWER TIER PARTICIPANT	
	Firm Name/Principal

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

Signature and Title of Authorized Official: _____

**CERTIFICATE OF COMPLIANCE WITH
INSURANCE REQUIREMENTS**

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

INSURANCE REQUIREMENTS (check appropriate boxes below):

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

AND

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

OR

- Consultant has identified areas of conflict with the insurance requirements and has provided a list of concerns in its response to the RFP; each referenced by section and page number of the Consultant Contract Agreement.

Company/Individual Name

Print Name of Authorized Official

Signature of Authorized Official

Date Signed

Address

Phone Number

Email Address

Broker Information:

Name:

Address

Phone Number

Email Address

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

Government Code Section 84308, 2 California Code of Regulations 18438.1, et seq.

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 3 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 proceeding 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 3 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:

Signature of Bidder

Date

Name

Title

Company

Address

City, State, and Zip

ATTACHMENT A

SBCTA BOARD OF DIRECTORS AND ALTERNATES

Agency	Board Representative	Alternate
City of Adelanto	Rich Kerr	Jermaine Wright, Sr.
City of Barstow	Julie McIntyre	Carmen Hernandez
City of Big Bear Lake	Bill Jahn	Randall Putz
City of Chino	Eunice Ulloa	Tom Haughey
City of Chino Hills	Ed Graham	Art Bennett
City of Colton	Frank Navarro	Richard DeLaRosa
City of Fontana	Acquanetta Warren	Jesus Sandoval
City of Grand Terrace	Darcy McNaboe	Sylvia Robles
City of Hesperia	Bill Holland	Russell Blewett
City of Highland	Larry McCallon	Penny Lilburn
City of Loma Linda	Rhodes "Dusty" Rigsby	Ronald Dailey
City of Montclair	Paul Eaton	John Dutrey
City of Needles	Edward Paget	Jeff Williams
City of Ontario	Alan Wapner	Debra Dorst-Porada
City of Rancho Cucamonga	L. Dennis Michael	Diane Williams
City of Redlands	Jon Harrison	Patricia Gilbreath
City of Rialto	Deborah Robertson	Edward Scott
City of San Bernardino	R. Carey Davis	James Mulvihill
City of Twentynine Palms	Joel Klink	Dan Mintz
City of Upland	Debbie Stone	Gino Filippi
City of Victorville	Jim Kennedy	James Cox
City of Yucaipa	David Avila	Bobby Duncan
County of San Bernardino 1 st District	Robert Lovingood	N/A
County of San Bernardino 2 nd District	Janice Rutherford	N/A
County of San Bernardino 3 rd District	James Ramos	N/A
County of San Bernardino 4 th District	Curt Hagman	N/A
County of San Bernardino 5 th District	Josie Gonzales	N/A
Town of Apple Valley	Curt Emick	Barbara Stanton
Town of Yucca Valley	Rick Denison	Merl Abel

DBE SOLICITATION LANGUAGE FOR RFP

A. SBCTA'S RESPONSIBILITY

It is San Bernardino County Transportation Authority's (SBCTA) policy to provide disadvantaged, minority, and women-owned business enterprises, as defined in Title 49 CFR Part 26, an equitable opportunity to participate in all contracting opportunities. SBCTA's agreements with Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) regarding its Disadvantaged Business Enterprise (DBE) programs, which include minority and women-owned business enterprises, are designed to administer contracts, VENDOR selection, and all related procurement activities without regard to race, color, religion, disability, political beliefs, age, national origin, gender, veteran status, or cultural background. Accordingly, no firm or individual shall be denied the opportunity to compete for SBCTA contracts by reasons so stated or implied.

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Caltrans and SBCTA have adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs."

This DOT-assisted project is subject to these stipulated regulations. In order to ensure that SBCTA achieves its overall DBE Program goals and objectives, SBCTA encourages the participation of small businesses, including DBEs as defined in 49 CFR 26, in the performance of contracts financed in whole or in part with U.S. DOT funds. In addition, this project is subject to Caltrans Disadvantaged Business Enterprise (DBE) requirements.

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

B. DISADVANTAGE

SBCTA, as the subrecipient of federal funds, has established a goal for the participation by DBEs of **8.4**% of the total Contract value. If the awarded Proposer has a total DBE commitment (15-G) in excess of the DBE goal, the Proposer will be held to the higher commitment amount.

Only DBEs who meet the definition contained within these provisions and who have been certified at the time the contract is awarded may be credited toward the goal.

If the DBE goal is not met, the Proposer shall demonstrate that adequate good faith efforts were made to meet the goal.

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

C. DEFINITIONS

The following definitions apply to the terms as used in these provisions:

1. "**Disadvantaged Business Enterprise (DBE)**" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose

management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

A certified DBE is owned by one (1) of the following six (6) groups: African American, Asian-Pacific American, Hispanic American, Subcontinent Asian American, Native American and Women owned businesses, which were identified by the Federal Highway Administration (FHWA).

3. **"Small Business Concern"** means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$22.41 million over the previous three fiscal years.
4. **"Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, women, or any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act, or by SBCTA pursuant to 49 CFR section 26.5. Members of the following groups are presumed to be socially and economically disadvantaged:
 - a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, Burma, Thailand, Malaysia, Indonesia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas, Macao, Fiji, Tonga, Kiribati, Juvalu, Naura, Micronesia, or Hong Kong;
 - e. "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; and
 - f. Women, regardless of ethnicity or race.
5. **"Owned and Controlled"** means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.
6. **"Manufacturer"** means a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by specifications.

7. **"Regular Dealer"** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
8. **"Other Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration to meet the social and economic disadvantage criteria described below.

a. Social Disadvantage:

- 1) The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.
- 2) The individual must demonstrate that he/she has personally suffered social disadvantage.
- 3) The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.
- 4) The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.
- 5) The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
- 6) A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

b. Economic Disadvantage:

- 1) The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.
- 2) The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

- Availability of financing
- Bonding capability
- Availability of outside equity capital
- Available markets

With respect to the individual and the business concern:

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

D. DBE BID SUBMISSION REQUIREMENTS

1. The following forms must be submitted with the proposal

a. **“Bidders List of Subcontractors (DBE and Non DBE)” -Exhibit 12-B**

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

- 1) Firm name;
- 2) Firm address;
- 3) Phone number;
- 4) A description of the work that each DBE will perform;
- 5) Range of annual gross receipts for the last year.

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

b. **Local Agency Bidder DBE Commitment (Exhibit 15-G)**

If the bidder is a DBE or intends to utilize DBE subcontractors and/or purchase goods or services from DBE vendors or DBE suppliers in the performance of this contract, the bidder shall provide the following information for every DBE firm who will be proposed and/or listed to participate to facilitate capturing DBE participation under this contract:

- 1) The complete name and address of each DBE who will participate in the contract;
- 2) A description of the work that each DBE will perform or provide;
- 3) The dollar amount of the work to be performed or provided by the DBE;
- 4) Valid DBE Certification eligibility status, in conformance with 49 CFR, Part 26.

c. **Good Faith Efforts (Exhibit 15-H)**

Bidders must submit **Exhibit 15-H** even if the “Local Agency Bidder – DBE Commitment” form (15-G) indicates that the bidder has met the DBE goal.

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

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

Monthly, the prime VENDOR must complete Form 315 to report all payments made to DBEs. It is important to identify all DBE firms that were paid during the reporting period for the project, including all DBEs listed on the DBE Commitment Form (Exhibit 15G (1)), regardless

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

E. DBE CERTIFICATION

SBCTA is participating as a Non-Certifying Member in the California Unified Certification Program (CUCP). SBCTA requires all DBEs listed by bidder for participation to be certified as eligible DBEs at the time of bid submission. Only participation by DBEs certified by the CUCP under the DOT regulations published under 49 CFR Part 26 may be credited towards race-neutral or race-conscious DBE participation. It is the responsibility of the bidder to verify the DBE certification status of all listed DBEs.

F. DBE ELIGIBILITY AND COMMERCIALY USEFUL FUNCTION STANDARDS

1. A DBE must be a small business concern as defined pursuant to section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
2. A DBE may participate as a prime VENDOR, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company.
3. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
4. A DBE must perform a commercially useful function in accordance with 49 CFR section 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least **thirty percent (30%)** of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.
5. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 - a. The CUCP web site, which can be accessed at <http://www.californiaucp.com>; or the Caltrans "Civil Rights" web site at <http://www.dot.ca.gov/hq/bep>.
 - b. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Civil Rights Certification Unit at (916) 324-8347 for assistance.
 - c. In order to identify certified DBEs, you must only use the California Unified Certification Program Database (CUCP). **Certifications from other agencies or organizations will not be accepted.**
 - i. "FRAUDS" and "FRONTS" - Bidders are hereby cautioned against knowingly and willfully using "fronts" or doing business with DBEs in a manner which could compromise the DBE's continued eligibility and to meet the DBE goal of this contract. Only legitimate

DBEs are eligible to participate in any federally funded contract. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Any indication of fraud, waste, abuse or mismanagement of federal funds should be immediately reported to SBCTA or to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline (800-424-9071), or to the following field office: FTA Special Agent-in-Charge, 201 Mission Street, Suite 1650, San Francisco, CA 94105, (415-774-2729).

G. DBE CREDITING PROVISIONS

1. When a DBE is proposed to participate in the contract, either as a prime VENDOR or subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards DBE participation. If the VENDOR is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted.
2. If a DBE intends to subcontract part of the work of its subcontract to a lower tier subcontractor, the value of the subcontracted work may be counted toward DBE participation only if the DBE subcontractor is a certified DBE and actually performs the work with his or her own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime VENDOR's DBE attainment.
3. Materials or supplies purchased from DBEs count toward DBE credit, and if a supplier is also a DBE, purchases will count toward the DBE goal under the following conditions:
 - a. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies counts towards the goal. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
 - b. If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies counts toward the goal. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specification and required under the Agreement are bought.
 - c. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution shall be by a long-term lease agreement and not an ad hoc or agreement-by-agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
 - d. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the actual amount charged for assistance in the procurement of the materials and supplies required or for the delivery of materials or supplies on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar

services.

4. For DBE trucking companies: credit for DBEs will count towards DBE credit, under the following conditions:
 - a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular agreement, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
 - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the agreement.
 - c. The DBE receives credit for the total value of the transportation services it provides on the agreement using trucks it owns, insures, and operates using drivers it employs.
 - d. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. A DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e. The DBE may lease trucks from another DBE firm including an owner-operator. A DBE who leases trucks from a non-DBE is entitled to credit only for the fee received as a result of the lease arrangement. A DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

H. GOOD FAITH EFFORTS

If the bidder fails to meet the established DBE goal, the bidder must document Good Faith Efforts to be deemed responsive to the DBE requirements set forth in this solicitation. This means that the bidder must demonstrate that it took all necessary and reasonable steps to achieve the DBE goal that could reasonably be expected to obtain sufficient DBE participation, even if the bidder was not fully successful. The efforts employed by the bidder should be consistent with actively and aggressively trying to obtain DBE participation sufficient to meet the established DBE contract goal. Mere pro forma efforts are not Good Faith Efforts to meet the DBE contract requirements. SBCTA will make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good efforts to do so.

Good Faith Efforts must be documented on Exhibit 15-H. The following types of actions and documentation are necessary to evidence such efforts:

1. Identifying efforts made to reasonably structure the contract scope of work for purposes of subcontracting with DBEs. Include documentation showing the portion of the scope of work DBEs will be solicited to bid/propose and the associated dollar value of each item. Bidder should

also identify the scope of work that the Bidder intends to perform with its own workforce.

2. Timely place advertisement(s) in one general circulation, one trade association publication and at least one disadvantaged/minority and women business focus media. The advertisements must include, at a minimum: identification of specific subcontracting opportunities being solicited; project name and location; DBE goal, including identification of SBCTA as Owner; bidder's contact person, including name, address, phone and fax; bid/proposal solicitation due date; and a statement that bidder intends to conduct itself in good faith with DBE firms for participation on the project. Advertisements should appear at least 15 calendar days prior to Bid submittal due date to be considered timely.
3. Provision of extending written notices to DBEs to solicit interest in all of the identified subcontracting areas toward promoting participation. There should be a sufficient number of written invitations to DBE firms for each subcontracting area identified.

Notices should be issued at least 15 calendar days prior to submittal due date to allow sufficient time for the DBEs to respond to the solicitation.

Subsequent efforts to follow-up on initial solicitations to DBEs, including contract requirements, plans and specifications timely provided to DBEs for purposes of soliciting their bids. Documentation should include:

- a. Names, addresses and telephone numbers of DBEs contacted by each subcontracting area identified/solicited;
 - b. Description of information timely provided to interested DBEs about the contract requirements, plans and specifications to assist DBEs in responding to the solicitation, and the dates and manner in which these documents were made available;
 - c. Statement of justification re: unsuccessful solicitation of DBEs;
 - d. Evidence of negotiating in good faith with interested DBEs, to facilitate DBE participation; and
 - e. Utilization of a sound basis of selection and/or rejection of DBEs bids.
4. A bidder using good business judgment must consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and must take a firm's price and capabilities, as well as the contract goal into consideration. The fact that there may be some additional costs involved in using DBEs is not, in itself, sufficient reason for a bidder's failure to meet established contract DBE goal. Also, the ability or desire of the prime VENDOR to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts toward meeting the objectives of DBE goal. Evidence of a willingness to modify planned prime VENDOR scope or subcontract packaging to facilitate DBE participation will demonstrate serious effort.
 5. Barring lack of qualifications to perform work, only significant price differences (the relevant Federal regulations reference 10% or more as significant) between the selected firm and rejected

DBE firms' proposed costs would be considered as valid cause for rejecting bids. Additionally, union vs. non-union employee status is not a legitimate cause for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.

6. Documentation of such negotiation includes the names, addresses, and telephone numbers of all subcontractors (DBEs and non DBEs) that submitted a bid, including copies of all bids received for each portion of work solicited, and stated reasons for bidder's choice of the selected and/or rejected subcontractor bid. Include in the negotiation document the reasons why additional agreements could not be reached with a DBE to perform the work.
7. In determining whether a bidder has made Good Faith Efforts, SBCTA will take into account the performance of other bidders in meeting the established contract-specific DBE goal requirements. The individual bidder's effort/commitment in meeting the established contract DBE goal will be evaluated against the average DBE participation commitments by the three (3) low responsive bidders. If there are fewer than three (3) responsive bidders, the average of two (2) bidders' goal commitments will be considered.
8. Provide offer of assistance to interested DBEs in obtaining bonding, lines of credit, and/or insurance required by the VENDOR. **Include** a description of assistance extended and made available by bidder to interested DBEs in obtaining bonding, lines of credit and/or insurance. At minimum, bidder must provide evidence of the availability of assistance by providing copies of subcontracting advertisements and DBE solicitation letters.
9. Utilization of outreach services available within the DBE community, including contractor groups, local, state and federal DBE offices and other organizations that provide assistance in the recruitment and placement of DBEs. Notices to community outreach services should be issued at least 15 calendar days prior to submittal due date. Include copies of letters, faxes, telephone logs, etc., used to contact organizations, which include the names of organizations/groups, dates, names of contacts, and telephone numbers, and copies of correspondence received from these entities acknowledging contact. The bidder must document outreach to a minimum of five (5) organizations/groups.
10. Only those efforts made prior to bid submittal due date will be considered in evaluating Good Faith Efforts. Failure to submit the required Good Faith Effort documentation within four (4) working days after bid submittal will be grounds for finding the bid non-responsive.

For additional assistance with Good Faith Efforts, please refer to SBCTA's website:
<http://www.sanbag.ca.gov/about/contracting.html>.

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

PART I

The bidder shall list all subcontractors (both DBE and non-DBE) in accordance with Section 2-1.054 of the Standard Specifications and per Title 49, Section 26.11 of the Code of Federal Regulations. This listing is required in addition to listing DBE Subcontractors elsewhere in the proposal. **Photocopy this form for additional firms.**

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

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

PART II

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

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

Distribution: 1) Original - Local Agency File

DBE INFORMATION – EXHIBIT 15-H GOOD FAITH EFFORTS

Omnitrans has an overall agency DBE goal of **8.4 %**. The information provided herein shows that a good faith effort was made.

Bidders should submit the following information even if the “Local Agency Bidder – DBE Commitment” form (15-G) indicates that the bidder has met the DBE goal.

Submittal of only the "Local Agency Bidder DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following types of actions will be considered as part of the bidder's Good Faith Efforts to obtain DBE participation:

a. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder. Attach copies of advertisements or proofs of publication:

Publications	Dates of Advertisement

b. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested. Attach copies of solicitations, telephone records, fax confirmations etc.

Names of DBEs	Date of Initial Solicitation	Follow-Up Methods & Dates

c. The items of work which the bidder made available to DBE firms, including, where appropriate, any break down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage of Contract

d. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE.

1. Names, addresses and phone numbers of rejected DBEs and the reasons for the Bidder's rejection of the DBEs:

2. Names, addresses and phone numbers of firms selected for the work identified above:

e. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs:

g. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime VENDOR or its affiliate:

--

h. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms. Attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.

Names of Agency/Organization	Method/Date of Contact	Results

i. Any additional data to support a demonstration of good faith efforts please include here.

j. Bidders are advised to attach all requested documents to this form. Include any and all supplemental materials necessary in order to demonstrate Good Faith Efforts

