



SBCTA

REQUEST FOR PROPOSALS (RFP) No. 18-1001834

FOR

**REDLANDS PASSENGER RAIL PROJECT
CONSTRUCTION MANAGEMENT CONSULTANT SERVICES
FOR RAIL MAINTENANCE FACILITY (IEMF)**

KEY RFP DATES

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| RFP Issue Date: | December 7, 2017 |
| Pre-Proposal Conference Date: | December 20, 2017, @ 2:00 p.m. |
| Question Submittal Deadline: | January 4, 2018, @ 4:00 p.m. |
| Response to Questions: | January 11, 2018 |
| Proposal Due Date: | January 18, 2018, @ 2:00 p.m. |
| Interview Date: | February 6, 2018 |
| Contract Award Date: | March 7, 2018 |
| Notice To Proceed: | March 28, 2018 |

FEDERAL TRANSIT ADMINISTRATION FUNDED PROJECT



December 7, 2017

**SUBJECT: NOTICE OF REQUEST FOR PROPOSALS (RFP) 18-1001834
“REDLANDS PASSENGER RAIL PROJECT CONSTRUCTION
MANAGEMENT CONSULTANT SERVICES FOR RAIL MAINTENANCE
FACILITY”**

The San Bernardino County Transportation Authority (“SBCTA”) invites proposals from qualified firms to provide Construction Management Consultant (“CMC”) services (“Services”) for the Redlands Passenger Rail Project (“RPRP”) Rail Maintenance Facility (“IEMF”) Project (“Project”) 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 March 2018. 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., Thursday, January 18, 2018.**

A Pre-Proposal Conference is scheduled for **2:00 p.m., Wednesday, December 20, 2017**, at SBCTA’s office, located at 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA 92410, in the First Floor Board Room. Attendance at this Pre-Proposal Conference is encouraged, but not mandatory. However, all proposers will be held accountable for compliance with all information and instructions given at the Pre-Proposal Conference.

All questions related to this RFP must be put in writing and submitted to SBCTA no later than **4:00 p.m., Thursday, January 4, 2018**. All questions must be clearly labeled, **“Written Questions”** and submitted electronically to:

Alicia Johnson
Procurement Analyst
procurement@gosbcta.com
RFP18-1001834

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>, 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.

The California Labor Code, sections 1770 et seq., requires that certain consultants on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, (<http://www.dir.ca.gov>). Proposers of this RFP agree to adhere to the Prevailing Wage requirement and use the wage schedules applicable at the time the work is performed, which can be obtained from the Department of Industrial Relations Internet site at (<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>).

Effective March 1, 2015, any consultant or subconsultant who submits a proposal or performs work that requires the payment of prevailing wages under state law must be registered with the Department of Industrial Relations. This includes not only work performed by the building and construction trades, but also other types of work, including trucking, surveying, and testing, if that work is subject to prevailing wage requirements.

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

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

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.

The award of this contract may be subject to a Pre-Award Audit required by applicable funding agencies and/or SBCTA itself. The selected firm shall have a recent audit of their Indirect Cost Rate (ICR) for the most recent completed fiscal year.

SBCTA

REQUEST FOR PROPOSALS 18-1001834

FOR

**“REDLANDS PASSENGER RAIL PROJECT CONSTRUCTION MANAGEMENT
CONSULTANT SERVICES FOR RAIL MAINTENANCE FACILITY”**

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 Construction Management Consultant (“CMC”) services (“Services”) for the Redlands Passenger Rail Project Rail Maintenance Facility (“IEMF”) Project (“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

A Pre-Proposal Conference is scheduled for **2:00 p.m., Wednesday, December 20, 2017**, at SBCTA’s office located at 1170 W. 3rd Street, 2nd Floor, San Bernardino, 92410, in the First Floor Board Room. Interested firms are strongly encouraged to attend the Pre-Proposal Conference, but no firm will be disqualified for failure to attend. However, all proposers will be held accountable for compliance with all information and instructions given at the Pre-Proposal Conference. Firms are asked to check-in with the Security Guard on the 1st Floor and be seated in the First Floor Lobby.

D. WRITTEN QUESTIONS/CLARIFICATIONS

All questions and or clarifications to this RFP, including questions that could not be specifically addressed at the Pre-Proposal Conference 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, January 4, 2018**. 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”**. 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 Cost Plus Fixed Fee 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 (Attachment A) and Contract (Attachment B) for a complete understanding of the terms and conditions of 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 or provided in the Pre-Proposal Conference as set forth above.

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 receive assistance from any such person or entity or that will use the services of such person or entity in performing the work will be disqualified. A firm that 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

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

Proposers are cautioned that making a false certification may subject the proposer to civil penalties, termination of existing contract, and ineligibility to bid or proposed on a contract for a period of three (3) years in accordance with Public Contract Code Section 2205. Proposer agrees that by submitting a proposal, that submittal shall constitute proposer's certification.

K. PREVAILING WAGES

The awarded firm shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages, including, but not limited to California Labor Code Section 1770 et. seq. It is required that all mechanics and laborers employed or working on this Project shall be paid not less than the basic hourly rates of pay and fringe benefits as shown in the current wage schedules of the Department of Industrial Relations (DIR), Division of Labor. Firms seeking to perform work on SBCTA's projects must be registered on the DIR website in order to submit a proposal on state and local projects as defined under the Labor Code.

SBCTA will not accept a proposal and not award any contract without verification that the consultant and their subconsultants are currently registered. Consultants and subconsultants on all public works projects will be required to submit electronic certified payroll records (CPRs) to the Labor Commissioner on the DIR website. Firms are still required to submit CPRs directly to SBCTA for review, as well. The prime firm will be required to ensure that their subconsultants subject to prevailing wages are properly registered with the DIR prior to proposal submittal.

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 use in performing the assignment and shall remain the sole property of SBCTA. All such materials shall be returned to SBCTA 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 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.

II. PROPOSAL SUBMITTAL

Proposals are due at or before **2:00 p.m., Thursday, January 18, 2018**. One original, six (6) 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. 18-1001834

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 (8½" x 11") pages in no less than 11-point font. This page limit shall include the Table of Contents, tabs 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. 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 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", and select "Contractor Resources".

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; experience working with the Southern California Regional Rail Authority, BNSF, and CPUC; demonstrated experience working with agencies and cities directly involved in this Project, if applicable; experience with federal and state regulations regarding commuter rail and freight rail construction, operations and maintenance; 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 the person who is a licensed Professional Engineer (PE) in the State of California and include a copy of PE's license.
- 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, 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 each 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.

The quantity and qualifications of field personnel to be assigned will be determined by the scope of the Project and the degree of difficulty of required tasks to be

performed. All personnel and personnel assignments are subject to approval by SBCTA. While some areas of responsibility may overlap, as a guideline, CMC personnel assigned to the RPRP should have the following qualifications:

1) Construction Manager/Resident Engineer

The preferred minimum qualifications for the position of Construction Manager/Resident Engineer are:

- Fifteen years of Construction Manager/Resident Engineer experience on similar construction projects or other equivalent experience, as determined by SBCTA.
- License Civil Engineer in the State of California.
- Proficient in the use of computer programs: Word and Excel.
- Anticipated to be a part time role depending on the firms staffing plan.

The Construction Manager/Resident Engineer will provide managerial oversight and act as the Resident Engineer of the project in strict accordance with the terms of the Contract and applicable standard of care, as defined below:

- The Construction Manager/Resident Engineer will ensure all personnel assigned to the project meet SBCTA's requirements for the class and level of technical expertise required to meet the expectations of the position. It will also ensure all personnel have been properly trained to meet SBCTA's safety training requirements prior to accessing the project site.
- The Construction Manager/Resident Engineer should have a thorough understanding of SCRRRA construction practices, American Railway Engineering and Maintenance-of-Way (AREMA) Standards, Federal Railroad Administration (FRA) and California Public Utilities Commission (CPUC) regulations governing railroads.
- Standard of Care: The Construction Manager represents that its management or supervisory personnel assigned to the project possess successful construction management experience, as detailed above (preferred minimum qualifications), concerning railroad construction projects of the same magnitude and degree that is contemplated in the subject project.
- Further, the Construction Manager/Resident Engineer agrees to provide professional services that meet or exceed the standard of care of construction managers possessing at least the same level of experience in the railroad construction.
- Construction Manager/Resident Engineer shall be responsible for developing the CMC's Project Safety Plan (PSP), reviewing the contractor's Site Health and Safety Plan and associated Activity Hazard Analyses (AHA), performing site orientation and any other safety training of CMC field staff, periodic monitoring of the project site, and reporting.
- Construction Manager/Resident Engineer shall set up, carry forward, and aggressively and effectively maintain the PSP covering all phases of the

project. It is expected that the Safety Officer will make periodic trips to the project site to audit the contractor's compliance with the Site Health and Safety Plan, prepare audit reports, and if necessary, issue safety violation notices.

The Construction Manager/Resident Engineer is responsible for the management, managerial oversight, administration, and coordination of the construction process from the conceptual development stage through final construction on a timely and economical basis. The Resident Engineer serves as SBCTA's representative on site. It will determine that the work of the contractor is performed in accordance with the construction contract, project plans, and specifications, and all other contract documents and amendments thereto to guard against defects and deficiencies in the contractor's work.

The Construction Manager/Resident Engineer also determines the contractor's compliance with plans, specifications, schedule, budget, environmental and safety requirements, including but not limited to concrete testing, compaction testing, and other necessary quality-control tests. The Resident Engineer also has the general responsibilities of coordinating and managing people, materials, and equipment, as well as the contractor's compliance with SBCTA's safety policies, and conducting safety assessments as required by the SBCTA Project Manager.

The Construction Project Manager/Resident Engineer should have a thorough understanding of SCRRA and FTA construction practices, AREMA Standards, FRA and CPUC regulations governing railroads, and be able to work effectively with engineers, architects, and others involved in the construction process and establish a line of communication with project team members.

Specific duties and responsibilities include the following:

- Work with engineers, architects, and others involved in the construction process and establish a line of communication with project team members.
- Provide constructability review of drawings and specifications throughout the design process relative to SBCTA's operations and provide recommendations as to the availability of materials, labor, and construction associated with the subject project. The Resident Engineer will notify SBCTA in the event it discovers that any design details may adversely affect the constructability, cost or schedules for the project.
- Identify a preliminary schedule for the development of the design, procurement and construction of the project.
- Oversee the pre-qualification of contractors and provide SBCTA with a list of qualified prospective bidders.
- Schedule and conduct the pre-bid meeting, evaluate contractors' bids and provide recommendations to SBCTA's Project Manager on the successful bidder.
- Schedule and conduct the pre-construction meeting.

- Review and evaluate engineering drawings and specifications for compliance with plans, schedules and all laws applicable to the work.
- Track and control construction costs against the project budget to review for cost overruns. Prepare cash flow reports and forecasts for the project to advise SBCTA's Project Manager as to any anticipated variance in the budget.
- Prepare the schedule and sequence for the various trades of work so that work is performed in accordance with the contract documents and the approved project schedule.
- Record the progress of the project and submit monthly written progress reports to SBCTA's Project Manager, showing percentages of completion and its relation to the planned schedule for the project. Provide SBCTA recommendations in the event the project falls behind schedule.
- Manage and process submittals, request for information, change request, change directives, change orders, payment applications, and deficiency notices
- Assist with the selection and procurement of project materials.
- Maintain reports and documentation necessary for the effective management of the project.
- Review and provide approval, if appropriate, of requests for payments to contractors.
- Review and evaluate shop drawings, catalog cuts, and requests for information for conformance with the contract documents.
- Inquire with the contractor as to satisfactory performance requirements associated with contractor-designed work, and assist the contractor in inspection of contractor-designed work (i.e., shoring or forms).
- Review and evaluate daily the quality and quantity of performance by the contractors, and recommend courses of action to SBCTA's Project Manager when contract requirements have not been satisfied.
- Resident Engineer will have the authority, upon written authorization from SBCTA's Project Manager, to require additional inspection or testing of the work and to reject work, which does not conform to the contract documents.
- Coordinate punch list preparation and follow-up.
- Assist in the correction of nonconforming work.
- Obtain all applicable warranties, if any, for the work and arrange for the transfer of same to SBCTA.
- Prepare all cost certification, partial and final pay, and lien release forms, review same as they are submitted, and perform project close-out activities.
- Provide for contractor warranty and follow-up inspections as appropriate.

2) Lead Field Inspector

The preferred minimum qualifications for the Lead Field Inspector assigned to this contract are follows:

- A minimum of 3 years of railroad construction inspection experience.
- Associate's degree in engineering or construction technology discipline (preferred, but not required).

The Lead Field Inspector performs inspections of construction projects for compliance with plans, specifications and contract documents and agrees to perform in accordance with the Standard of Care defined below.

Standard of Care: The Lead Field Inspector represents that inspection personnel assigned to this project possess successful inspection experience, as set forth above (preferred minimum qualifications), concerning railroad construction projects of the same magnitude and degree that is contemplated in the RPRP. Further, the Lead Field Inspector agrees to provide professional services that meet or exceed the standard of care of Field Inspectors possessing at least the same level of experience in the railroad construction industry.

Specific duties and responsibilities include the following:

- Conduct safety assessments and reviews; participate in daily job safety briefings. Provide prompt verbal reports, followed promptly in writing, concerning activity and failures, to the Resident Engineer.
- Analyze and review plans, specifications, contract documents, environmental documents, permits, etc., to gain a full understanding of project.
- Visit and become familiar with project site, surrounding area, and all other circumstances affecting the work on the project.
- Become familiar with local people, both railroad and non-railroad, who are involved with the project.
- Create inspection checklists from construction specifications and submit to the Resident Engineer for approval. Checklists should include, but not be limited to, frequency of tests and parameters for satisfactory performance.
- Inquire with the contractor as to satisfactory performance requirements associated with contractor designed work and assist the contractor in inspection of contractor designed work (i.e. shoring or forms).
- Coordinate and facilitate all construction-related meetings, including but not limited to, pre-bid and pre-construction meetings.
- Assist in the interpretation of plans and specifications for contractors and advise the Resident Engineer when such interpretation issues arise.
- Make sure all required documents (shop drawings, schedules, procurement schedules, etc.) are submitted before Notice to Proceed (NTP).
- Monitor daily construction throughout project and arrange all necessary testing of the work performed, including but not limited to concrete

testing, compaction testing and other necessary, miscellaneous quality control tests in a field environment. Immediately notify the Resident Engineer verbally, followed promptly in writing, of any deficiencies in the activities inspected and reviewed.

- Conduct regular checks of material and equipment for compliance with the contract documents, to guard against defects and deficiencies in same.
- Immediately notify the Resident Engineer verbally, followed promptly in writing, of the results of all testing performed and any discrepancies detected concerning performance, equipment or materials.
- Include in inspection an evaluation of contractor's compliance with plans, specifications, schedule, budget, environmental and safety requirements.
- Prepare all daily reports and construction progress reports, including logs of deployment of workers and machinery, and safety assessments, and submit daily at the close of work activities to a predetermined distribution list. Highlight discrepancies and corrective actions taken and verify satisfactory performance of corrective actions taken.
- Work with the contractor and the Resident Engineer to resolve problems encountered.
- Prepare a digital photo record depicting the work performed and any quality issues.
- Ensure contractors prepare/revise record drawings monthly. Submit to the Resident Engineer.
- 30 days prior to completion of project or as soon as prudent upon the completion of project, coordinate a contractor walk-through, create a punch list, and review record drawings and pay estimates, etc.
- Follow up to approve satisfactory performance of all punch list work.

3) Document Controller

The preferred minimum qualifications for the Document Controller are as follows:

- Five years relevant experience on construction projects.
- Experience with project documentation requirements and document filing practices on public works construction projects, and experience in using electronic document management systems, for access to, and retention of project documents of all types.
- Proficient in the use of computer application programs: Word and Excel, and experience with document management software such as Primavera Contract Manager, Expedition, Meridian Prolog Manager, e-Builder, or other similar document control systems.
- Experience with web-based systems for the storage and retrieval of shared documents and drawings.
- Ability to work independently and meet deadlines.

Under the direction of the Resident Engineer, Document Controller will assume the following functional responsibilities, and shall possess experience in these areas:

- Manage the flow of correspondence and all other project documentation required to be managed by the Resident Engineer.
- Assist the CMC staff by performing administrative tasks as instructed.
- Log the issuance, receipt, disposition and processing steps of all documents, such as Requests for Information (RFI), shop drawings, change order requests, submittals, change directives, change orders, deficiency notices, and other documents that are required to be tracked until accepted, approved or resolved.
- Ensure that all documentation and records are being maintained and properly stored for easy retrieval in accordance with SBCTA's Contract.
- Monitor the creation of documentation and reports required of the CM staff, notify the Resident Engineer of any deficiencies, resolve documentation issues, and fill any gaps.
- Assist Inspectors, SBCTA staff, and other project participants in accessing and obtaining project documentation.

4) Structural Representative or Lead Structural & Building Inspector

The preferred minimum qualifications for the position of Structural Representative are:

- A minimum of six (6) years of structural & building construction inspection as related to major public works projects and a four-year degree in civil/structural engineering is desired.
- Licensed Professional Structural Engineer in the State of California.
- Knowledge of stress analysis, structural mechanics, and strength of materials.
- Knowledge of SCRRA construction practices and the physical characteristics and properties of various bridge construction materials including concrete and steel.
- Experience in the following areas: Foundations, pile driving, concrete pre-stressing, building construction, slabs, beams, columns and roof, cast-in-place wall construction, falsework, and shoring.
- Ability to work independently. Ability to perform duties in the construction field office and effectively make decisions concerning construction work in progress and solving field problems.
- Ability to direct the efforts of subordinate inspectors.
- Ability to use an automatic level and transit for verifying line and grade.
- Thorough understanding of SCRRA field methods, practices, and construction office procedures.

The Structural Representative shall assume the following functional responsibilities:

- Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of structural construction such as foundations, walls, beams, columns, slabs, roofs, and drainage structures.
- Make grade, alignment, quantity, falsework, and shoring calculations.
- Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the project. Coordinate the sampling and testing of construction materials to monitor compliance with contract specifications.
- Monitor and track contractor progress. Prepare daily, weekly, and monthly reports as required.
- Coordinate with Resident Engineer and Construction Staking and Material Testing CMCs.
- Direct the daily activities of subordinate inspectors.

5) Track Inspector

The preferred minimum qualifications for the position of Track Inspector are:

- A minimum of 1,000 hours of experience in Track Inspection, including rail, ties, ballast, switches and other track materials.
- Journeyman license or equal.

SBCTA reserves the right to disqualify any Track Inspector at any time during the work. This right is at the sole discretion of SBCTA and is not subject to protest or appeal.

6) Utilities Inspector

The preferred minimum qualifications for the position of Utilities Inspector are:

- A Minimum of 1,000 hours of experience in Utilities Inspection, including Storm Water Drainage and Sewer System.
- Utilities Inspector certification or equal.

SBCTA reserves the right to disqualify any Utilities Inspector at any time during the work. This right is at the sole discretion of SBCTA and is not subject to protest or appeal.

7) Mechanical, Electrical and Plumbing (MEP) Inspector

The preferred minimum qualifications for the position of MEP Inspector are:

- A Minimum of 1,000 hours of experience in Mechanical, Electrical and Plumbing construction work.
- All MEP Inspectors shall be licensed in their respective technical trades.

SBCTA reserves the right to disqualify any MEP Inspector at any time during the work. This right is at the sole discretion of SBCTA and is not subject to protest or appeal.

8) Signal Electrician

The preferred minimum qualifications for the Signal Electrician assigned to this contract are:

- A minimum of 3 years of railroad signal inspection experience.
- Associate's degree in engineering or electrical technology discipline (preferred, but not required).

The Signal Electrician will assume the following functional responsibilities:

- Perform wiring and installation of railroad signal and grade crossing warning system circuits, component, and control equipment and devices including their primary and backup power supply systems.
- Signal Electricians oversee the wiring, labeling and connection/continuity/resistance testing, as appropriate, of all railroad signal and grade crossing warning system circuits, components, control equipment and associated devices including their primary and backup power supply systems.

Signal Electricians shall be paid at the prevailing wage rate for the locality of the construction.

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 are asked to submit only the technical information requested in this RFP. **No cost proposal or work hours are to be included in this phase of the RFP process.** Please note that the top ranked firm will be asked to provide at least one of the following with the price proposal: a copy of their prior fiscal year and most recently completed fiscal year cognizant approved Indirect Cost Rate and approved state DOT Cognizant Letter of Approval; a copy of their prior fiscal year and most recently completed fiscal year Indirect Cost Rate Schedules and audited report by an independent CPA; or a copy of the prior and most recently completed fiscal year Independent Cost Rates evaluation or audit report on a prior Caltrans or public agency contract, and any other governmental agency report/review/attestation.

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 B, 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) 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 **February 6, 2018** 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 in the opinion of SBCTA is 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 of 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. – 40 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. – 30 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 will be negotiated with the top ranked firm. Should negotiations fail with the top ranked firm SBCTA will discontinue negotiations and commence negotiations with the second ranked firm, and so on until the Scope of Work, level of effort and cost/price have been successfully negotiated and a contract has been agreed to. However, SBCTA may elect at any time to end negotiations and not award the contract.

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, hover over “About Us”, and click on “Contracting Opportunities”, which will take you to the “Contracting” page. On the “Contracting” page, click on “Contractor Resources” under the heading “Important Documents”.

VII. DEBRIEFING

Firms who submit a proposal in response to the RFP shall be notified in writing when: the firm is not selected to receive further consideration in the RFP process; the firm is selected for the interview process; and after the RFP Evaluation Committee’s recommendation to award has been determined. Firms who are 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

Exhibit A

REDLANDS PASSENGER RAIL PROJECT
RAIL MAINTENANCE FACILITY
CONSTRUCTION MANAGEMENT SERVICES — SCOPE OF WORK
RFP No. 18-1001834

INDEX

- A. DESCRIPTION OF SERVICES
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A. DESCRIPTION OF SERVICES

The San Bernardino County Transportation Authority (“SBCTA”), will utilize the services of a Construction Management Consultant (CMC) to support the construction activities for the Redlands Passenger Rail Project (RPRP) Rail Maintenance Facility. The CMC will provide construction management, and materials testing, support for SBCTA’s Rail Maintenance Facility. A description of the project is given below.

A.1 Redlands Passenger Rail Project

The Redlands Passenger Rail Project (RPRP or project) will be constructed and operated on the rail corridor near and along Interstate 10 (I-10) and is the segment of railroad in San Bernardino County stretching from the Downtown San Bernardino Transit Center (DSBTC), to the University of Redlands. The project is located entirely in the County of San Bernardino and traverses the cities of San Bernardino and Redlands, California. For the RPRP operation, Diesel Multiple Unit (DMU) vehicles will be used for commuting passengers.

The project extends along an existing railroad right-of-way (ROW) owned by SBCTA and commonly referred to as the Redlands Subdivision and proposes the operation of passenger rail service with five station stops. SBCTA also proposes the replacement of the existing railroad tracks and ties, reconstruction or rehabilitation of existing bridge structures, drainage improvements, at-grade roadway crossing and safety improvements, including the implementation of Quiet Zones, passenger stations, and improvements to pedestrian access. The RPRP construction project also involves building a new wayside signal and communications system that includes positive train control (PTC), procuring a fare collection system, and procuring diesel multiple unit (DMU) passenger train sets.

A DMU Storage & Maintenance Facility will be constructed at the Inland Empire Maintenance Facility (IEMF) Facility on West 3rd Street, east of the railroad and west of N Street, in the City of San Bernardino. The design of the DMU Storage and Maintenance Facility will be completed by March 2018 and the construction is scheduled to begin in August 2018.

A.2 Services

Services for this RFP are required for the Construction of the DMU Storage and Maintenance Facility only and are anticipated to generally include, but are not limited to the following: participation in the evaluation of scheduling of the proposed project; construction project advertising, bid analysis, and award; construction inspection; materials testing, landscape inspection, contractor interface and contract administration; and other assorted duties as appropriate in managing construction of DMU Storage and Maintenance Facility Project.

It is expected that the CMC will assign a full-time Construction Project Manager/Resident Engineer to coordinate all contract and personnel activities for all phases of construction. Other inspection personnel may be assigned to direct and coordinate all project specific field activities and responsibilities as needed for satisfactory performance on the project. Only the Construction Project Manager/Resident Engineer is required to be licensed as a Professional Engineer in the State of California at the time of proposal submittal through the duration of the contract. The CMC is expected to provide the necessary personnel to administer the construction support services requested herein and to assign qualified field personnel to perform the requested services, including close coordination with SBCTA’s Program Management Consultant (PMC).

Insofar as the CMC's approach described in the Proposal, the scope of responsibility and the total number of personnel assigned to each construction phase is left to the discretion of the CMC. The Proposal shall include a staffing plan, an organization chart and a resource loaded schedule that establish the firm's ability to adequately and appropriately staff and manage the project.

SBCTA anticipates that the total contract will be approximately 20 months in duration, with preconstruction services starting in April 2018, construction phase of 12 months to start in August 2018 and finish in July 2019, followed by closeout and commissioning activities not exceeding two months.

SBCTA has designated a Project Manager to coordinate all construction activities.

The CMC shall report to and receive direction from SBCTA through the Project Manager, or his/her designees. The SBCTA Project Manager is responsible for coordination of all SBCTA construction activities and for coordinating the efforts of the total construction team. The SBCTA Project Manager will be the main contact and primary source of information between the CMC and other SBCTA consultants working on the Project, 3rd parties and Project stakeholders.

A. PERFORMANCE REQUIREMENTS

Construction Management: CMC shall furnish a Construction Project Manager/Resident Engineer to coordinate CMC operations with SBCTA. The Construction Project Manager/Resident Engineer shall be responsible for all matters related to CMC personnel and operations. The Construction Project Manager/Resident Engineer shall be assigned to direct and coordinate construction activities under this contract. The Construction Project Manager/Resident Engineer shall be in responsible charge of construction management and construction activity within the project.

The number of CMC personnel assigned to the project will vary throughout the duration of the contract. CMC personnel will be assigned, in varying levels of responsibility, as needed by the CMC to meet the project schedule, project requirements, and construction activities.

Resumes of personnel must be submitted to SBCTA for review and approval prior to assignment to the project. SBCTA and CMC will jointly determine the quality and quantity of services that are required by CMC personnel. Personnel selected for assignment by CMC shall be made available for personal interviews prior to acceptance by SBCTA. If, in the opinion of SBCTA, an individual lacks adequate experience, the individual may be rejected or may be accepted on a trial basis until such time the individual's ability to perform the required services has been demonstrated. If, at any time, the performance of CMC personnel is unsatisfactory to SBCTA, SBCTA may release him/her by written notice and may request another qualified person be assigned.

Key CMC personnel as identified by the CMC shall not be transferred from the project unless approved in writing by SBCTA. SBCTAs shall have the authority to penalize the CMC up to \$25,000 for removal of key CMC staff from the project without prior SBCTA approval.

If CMC personnel are on leave of absence, the Construction Project Manager/Resident Engineer shall provide equally qualified replacement personnel until the assigned personnel returns to the project approved by SBCTA.

The typical workday includes all hours worked by the construction Contractor. If necessary,

overtime for CMC personnel may be required. The construction Contractor's operations may be restricted to specific hours during the week, which shall become the normal workday for CMC personnel. The Construction Project Manager/Resident Engineer, with prior concurrence from SBCTA, shall have the authority to increase, decrease, or eliminate CMC personnel work hours dependent on the schedule and requirements of the construction Contractor. All overtime pre-planned by CMC personnel shall be approved and authorized by SBCTA prior to each occurrence. If extraordinary circumstances require CMC over- time, the time along with an explanation shall be submitted to SBCTA within five (5) working days of the incident.

CMC personnel shall be knowledgeable of and comply with all applicable local, state, and federal regulations. CMC personnel shall cooperate and consult with SBCTA, State, Federal, and City officials during the course of the project. CMC personnel shall perform duties as may be required to assure that construction is being performed in accordance with the project plans and specifications and all appropriate State and Federal rules and regulations. CMC personnel shall keep accurate and timely records and document all work performed by the Contractor and CMC.

CMC shall monitor for Contractor's compliance with the labor standards provisions of the Contract and the related wage determination decisions of the Secretary of Labor.

CMC personnel shall assist SBCTA and local agencies in obtaining compliance with the safety and accident prevention provisions.

All services required herein shall be performed in accordance with Southern California Regional Rail Authority (SCRRA), California Public Utilities Commission (CPUC), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), and where applicable, California Department of Transportation (Caltrans) guidelines, regulations, policies, procedures, manuals, and standards.

B.1 Materials Testing & Source Inspection:

The number of field testing and source inspection personnel assigned to the project will vary throughout the duration of the construction contracts. CMC – AASHTO certified materials testing and source inspection personnel will be assigned as needed by the Resident Engineer to meet the required numbers and frequencies of testing based on schedule of the construction contractors.

Materials Testing/Source Inspection Services will be provided on an on-call basis. The duration of assignments could vary from a minimum of a few hours to the full term of the project. CMC personnel will be available within one (1) day of written notification by SBCTA.

It is the intent of SBCTA to maintain a consistency of material testing/source inspection quality throughout each phase of the project. CMC is therefore encouraged to provide, where ever and whenever possible, the same personnel for the duration of each construction contract.

On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CMC will not provide services unless authorized by the SBCTA Project Manager.

Resumes of materials testing/source inspection personnel must be submitted to SBCTA for review and approval prior to assignment to the project. If, at any time, the level of performance of any testing personnel is below expectations, SBCTA may release that field person and request that another be assigned as needed.

AASHTO certification documentation of the material testing laboratory shall be submitted to the SBCTA for review and approval.

CMC shall be responsible for drafting a Source Inspection Quality Management Plan (SIQMP) to match the project requirements, which outlines the approach to source inspection and the roles and responsibilities of the source inspection personnel. CMC shall provide Structural Materials Representative (SMR), Steel inspectors, Non-destructive Steel Inspectors, Coating Inspectors, Concrete Inspectors and other source inspectors as needed.

B.2 Construction Surveying

CMC shall review and provide Quality Assurance and Quality Control of the Contractor's construction surveys for the project. All services required herein shall be performed in accordance with SCRRA guidelines, regulations, policies, procedures, manuals, and standards, except as noted in the special provisions.

B. DUTIES AND RESPONSIBILITIES

The following scope of work is divided into three phases: Pre-Construction, Construction, and Post-Construction. This generalized scope of work does not list all the CMC responsibilities. CMC shall provide complete and comprehensive construction management services for each phase of work, for each construction contract issued by SBCTA to complete the RPRP.

C.1 Phase 1 — Pre-Construction Services

Immediately following receipt of the NTP, the CMC shall establish the field office with staff that includes the full-time Construction Project Manager/Resident Engineer and staff as directed by SBCTA to complete the following items.

- a. Develop a Construction Management Plan that includes the procedures for the construction management, material testing and Inspections modeled after similar rail maintenance facility (RMF) projects. At a minimum, it should address the control and management of construction related documents, including: Requests for Information; Change Orders; Contractor Submittals; Construction Photos; Operations and Maintenance Manuals; As-built drawings and Project Record Documents. This document shall follow and implement appropriate guidelines in the latest FTA "Project and Construction Management Guidelines"
- b. Perform constructability analysis of the 90% complete construction documents. The RMF Design Consultant will support this analysis and coordinate with the CMC on appropriate plan, specification and bid item revisions.
- c. Provide constructability review comments of the 100% construction documents.
- d. Participate in risk management sessions to identify and mitigate against construction risk and hazards.
- e. Coordinate with the Program Management Consultant (PMC) to analyze and provide comments on the Primavera CPM Master Project Planning and Construction Overview Schedule detailing phasing and tasks and sub-tasks for each phase. Include all potential work items from contractor, SBCTA and CMC work items.
- f. Support Bid/Award Process — Assist SBCTA and RMF Design Consultant in

responding to bid addenda, and bid analysis, pre-qualification of contractors, and recommend award of the construction contracts to the Board.

- g. Assist SBCTA with coordination of the pre-bid meeting. Assist in responses to contractor's questions during the bid period.
- h. Attend Pre-construction meetings as requested.
- i. Document existing conditions through digital still photography and submit all photos in digital format to SBCTA prior to start of construction.
- j. Perform site reconnaissance and review contract document provisions for site access, staging, parking, utilities, etc. and make recommendations for items to be included in the construction contract documents.
- k. Monitor all Construction Environmental Control Plan requirements.
- l. Prepare a CM Quality Assurance/Quality Control (QA/QC) Plan, including review and audits of construction contractor QA/QC plan. The CMC's QA/QC Plan shall be developed in accordance with "FTA-MA-06-0189-92-1 Quality Assurance and Quality Control Guidelines" and shall be consistent with SBCTA's Program Management Plan (PMP) and Quality Assurance Program. See Section C.01.2.7 Quality Assurance/Quality Control (QA/QC) Requirements for additional requirements.
- m. Review contract requirements for Contractor Safety Plan used to govern job-site safety during the construction process.
- n. Review project specific testing requirements to be included in the construction contract documents. These will be utilized to ensure that all job materials and construction activities are being reviewed and tested.
- o. Review contract specific and overall project start-up and test procedures that will be included in the construction contract documents. These procedures shall comply with all state and federal agency requirements necessary to make the completed project ready for revenue service.
- p. Review hazardous material identification, notification and remediation policy referenced in the construction contract documents and used to facilitate prompt and legal disposal of job-site hazardous materials during the construction process.
- q. Review the draft Storm Water Pollution Prevention Plan (SWPPP), in accordance with the State Water Resource Control Board requirements.
- r. Verify that all required permits, easements, utility relocation agreements, cooperative agreements, and memorandums of understanding (MOU's) are complete and the associated requirements are incorporated into the construction plans and special provisions.
- s. Review PMP to assist in understanding federal requirements for construction management procedures and reporting.

C.2 Phase 2—Construction Services

C.2. 1 General Requirements

a. Progress Management:

- l. Submittals, Nonconformance Reports, (NCR) and RFIs: Review for quality and completeness, process and track. The RMF design consultant has a supporting

role in responding to RFIs and reviewing non-conformance reports and reviewing contractor submittals and shop drawings for adherence to design and specifications. Coordinate and transmit RFIs and submittals to the design consultant as directed by SBCTA. Facilitate timely review of these.

- Progress Payments: Review/approve/reject contractor's monthly progress payment requests. Measure and track quantities installed for all unit rate items and maintain Schedule of Values progress payment in FTA format.
- Monitor permits, submittals, shop drawings, material procurement, RFIs, bulletins, change requests, change orders, schedules, and recovery plans, coordination with agencies, jurisdictions, utilities, and Engineer of Record.
- Changes/Claims: Recommend and implement change orders and claim avoidance practices. Analyze, negotiate, facilitate settlement of claims, and process change orders in a timely manner in accordance with the approved CMP procedures. The design consultant will revise design documents as required.
- Track/analyze/report on contractor/subcontractor lien releases.
- Document Control: Adhere to SBCTA procedures and maintain hard copies. All documents are to be scanned and saved electronically in the field with weekly backups maintained off site.
- Contractor Insurance: Track policies and renewals, including subcontractors.
- Labor Compliance and Disadvantaged Business Enterprise (DBE) Monitoring: Support SBCTA by obtaining certified payrolls; ensure that DBEs are performing designated work. Obtain contractor's DBE compliance reports. Track and document contractor compliance with prevailing wages and Equal Employment Opportunity (EEO) including performing field interviews of contractor personnel. See Section C.2.8 Prevailing Wage Monitoring for additional requirements.

b. Documents:

1. Construction Safety and Security: Review contractor's site-specific Safety and Security Plans. Monitor, document, and prepare accident reports. Observe and document in an incident log contractor's compliance with the project safety plan.
2. Storm Water Pollution Prevention (SWPPP): Track compliance with the project SWPPP (and/or Water Quality Control Plan (WQCP)). Perform site inspections to ensure Best Management Practices (BMPs) have been implemented as outlined in the SWPPP/WPQP and that they are properly installed and performing correctly. Perform weekly or daily inspections during the rainy season. Perform run-on/run-off sampling and testing if required by the SWPPP/WQCP.

3. Review of Traffic Plans (Detours and Lane Closures): Review construction contractor plans, assist with resolution of issues, and assist with coordination of the traffic plans with the roadway agencies (City of San Bernardino, City of Redlands, City of Lorna Linda, and CALTRANS) and adjacent property owners.
- c. Provide construction related geotechnical services necessary to monitor compliance with contract requirements.
 - d. Systems Inspection, Testing, Commissioning, and Start-up: perform factory visits, complete manufacturers quality audits, test reports, safety certifications, and verify as-built drawings and calculations. The CMC shall also coordinate with SBCTA and SCRRA in implementing both construction phase and start-up phase testing in achieving acceptance and approval by appropriate agencies and authorities. The CMC shall submit timely reports on problems, progress, and completion of the start-up testing shall be submitted to SBCTA. The CMC shall also provide technical assistance to SBCTA and coordinate the interface between construction and operations personnel for the start of revenue services, and assist SBCTA with obtaining the Project System Safety Certification from the CPUC.
 - e. Survey Support (QA/QC) Services: Monitor construction contractor compliance with surveying requirements; verify layout and controls, perform independent survey checks of line and grade, spot check contractor reference points and verify location and preservation of the critical baseline survey points prior to and after construction (SBCTA provides construction control surveys). The CMC shall include a California licensed surveyor on the CMC team to provide these services and additional 1 baseline surveys if the contractor's survey cannot be relied upon. CMC will provide one set of construction staking for all aspects of the construction. Additional staking will be at the contractor's expense.

C.2.2 Communication

- a. CMC is responsible for interfacing, coordination, and communication of all activities during construction, and to keep SBCTA well informed at all times. This effort of interfacing, coordination, and communication includes but is not limited to: utility companies; community relations (SBCTA and CMC); labor organizations; cities and the County; SCRRA, BNSF, and Omnitrans; Esri and the University of Redlands; Army Corps of Engineers; U.S. Fish and Wildlife; Engineer of Record; architects, and other agencies; CMCs; and other entities associated with the project.
- b. Coordinate with Mainline Design Consultant (MDC) to facilitate prompt resolution to design and construction related issues.
- c. Utility Coordination: Assist construction contractor and coordinate project utility requirements with MDC. Assist SBCTA with coordination of utility owners for required utility relocation work. Provide knowledgeable utility field inspectors to oversee utility design, and integration of required changes to resolve utility conflicts. These inspectors will be required to coordinate interface milestones, work windows, and monitor the overall efforts of construction contractors.
- d. Coordinate Flagging: Schedule SCRRA flagging, assign watch persons for protection of workers and equipment not required by SCRRA and under CMC purview, assure that all CMC and Contractor field personnel complete and stay current with railroad safety training requirements.

- e. Prepare weekly progress reports to include daily dairies, project/contract status, deficiency logs, field change notices, new and outstanding issues, actions to be taken, schedule update, calendar days spent and remaining, claims evaluation, and status of all logs including submittals, RFIs, contract change order documents, drawing registers/control logs, etc.
- f. Prepare Monthly Progress Summary Reports indicating CMC and Contractor's contract status, job site conditions, specific conditions encountered, corrective measure taken, progress and record photos, manpower reports, construction schedule update (including narrative), current project cost, and projection of cost including potential change orders, issues and resolutions, itemize all to-date project costs and forecast project costs by totaling base contract payments. It should also include any critical issues requiring action by discussing and prioritizing issues and setting action responsibilities identifying any significant problems with the budget or staffing. Submit the reports to SBCTA.
- g. The CMC Resident Engineer shall immediately notify SBCTA of any significant construction problem that may impact cost, schedules, relations with other entities, or accidents. This notification shall, as soon as practicable, include written recommendations on options to resolve the problem.
- h. Conferences/Meetings:
 - 1. Conduct weekly progress, daily pre-work, weekly safety, and third party coordination meetings.
 - 2. Conduct and produce meeting minutes and action item lists for weekly contractor progress review meetings for submittal to SBCTA. Provide agendas to include the weekly progress report elements.
 - 3. Prepare, coordinate, facilitate and participate in Partnering Program and conferences at the onset of construction and throughout the duration of construction activities with SBCTA, design consultant, all construction contractors, and other key project stakeholders. This Program shall promote teamwork and open lines of communication to facilitate the successful completion of the RMF Construction project.

C.2.3 Scheduling Control

- a. Review and monitor contractor's schedule for accuracy, compliance, completed work, and forecast reasonableness.
- b. Coordinate with the PMC to expand and maintain the Primavera CPM Master Project Planning and Construction Overview Schedule to include construction contracts activities.
- c. Review and approve baseline construction schedules, monthly schedule updates, and 2-week look-ahead schedules submitted by contractors for compliance with the construction contract specifications.
- d. Provide assistance to develop work-around schedules or recommend other measures required to mitigate delays or expedite the schedule.
- e. Review and approve delay analyses submitted by contractors for change order work.

- f. Prepare monthly report summarizing contractor progress, critical path analysis, and contractual milestone comparisons of baseline versus current schedule, and resource and cash flow projections.

C.2.4 Cost Control/Estimating

- a. Cost Engineering/Estimating: Maintain an up-to-date trend system which identifies all potential cost (and cost of schedule) impacts and forecast to complete.
- b. The CMC is responsible for construction contract administration activities, field review and verification of work in place, review and approval of contractor' payment requests, and the negotiation and recommended approval of certain change orders in accordance with approved guidelines. Develop and maintain logs at the field office sites of all-active contract change orders, claims, trends, bid item adjustments, and incurred cost. At the end of each reporting period, CMC will provide a summary of these logs. The summary will show the cumulative totals of the above logs for each contract.
- c. Prepare monthly, a three-month look ahead Project Staffing Projections to effectively monitor and compare the CMC costs to the original proposed Work Plan and Budget.
- d. The CMC will assist in, or participate in negotiations for contract change orders, including but not limited to preparing an independent cost estimate to help establish a price for extra work and delays. The fair and reasonable cost estimate will be used as a basis for the change order negotiations, and as backup documentation.
- e. In preparing cost estimates, the CMC will prepare and maintain complete documentation establishing the basis of the estimates. This documentation prepared in accordance with FTA requirements shall include the basis for all labor, material and equipment costs. Costs shall include all applicable direct and indirect costs, including negotiated profit margins. Any cost necessary to reflect the unique or unusual characteristic of the change order shall be included.

C.2.5 Inspection Control

Provide on-site daily inspections and thorough documentation to check the quality and quantity of the work performed by all trades and guard SBCTA against defects and deficiencies in the work of the contractors. Inspect workmanship, quality, construction means, methods, techniques, and sequences to evaluate the contractor's compliance with the requirements of the construction documents and recommend necessary remedial action to SBCTA and the Contractor.

Prepare daily field reports detailing weather conditions, status of work, and the location and type of work performed by the Contractor. For each daily work activity, document the number and classification of craft labor, supervision, equipment and materials used.

Any construction work not properly inspected and tested shall be grounds for removal of the CMC or specified personnel.

Routine responsibilities associated with providing inspection during construction include, but are not limited to, the following:

- a. Provide daily inspection and documentation of job related activities. Prepare and

maintain thorough daily inspection reports.

- b.** Provide continual review of plans and specifications to identify discrepancies, and ambiguities, omissions, or conflicts in plans, specifications, and bid schedules that may generate misinterpretations and/or lead to disagreements.
- c.** Provide inspection oversight for utility relocations performed by non-SBCTA contractors.
- d.** Coordinate work schedule with contractor for testing and surveying.
- e.** Document information related to manpower, equipment, and time for extra or force account work or claim monitoring.
- f.** Attend and document contractor tailgate safety meetings.
- g.** Observe and enforce safety attire compliance requirements and on-track safety certification.
- h.** Confirm accurate measured quantities and review pay estimates submitted by the contractor.
- i.** Provide electronic pictorial and video logbook of construction activities.
- j.** Report all discrepancies requiring corrective actions to SBCTA.
- k.** Meet with contractor to review proposed work and schedule required inspection.
- l.** Provide monthly inspection of contractor's As-Built drawings.
- m.** Maintain separate As-Built drawings.
- n.** Develop "Punch List" items and follow-up with corrective measures.

C.2.6 Material Sampling and Testing

CMC will provide QC, obtain laboratory testing services, and provide independent verification of contractor compliance with specifications.

The CMC shall maintain primary responsibility for verification testing for contract compliance of rail welding, and the final track work inspection, building inspection, civil inspections, structural, architectural, industrial inspections, mechanical, electrical, plumbing inspections, utility inspection, exhaust, and fire life safety. The Construction Contractors have the primary responsibility for materials sampling and testing. The CMC shall satisfy themselves that the Construction Contractor's test, frequency of test, re-tests, and results comply with contract specifications. All materials sampling and testing documentation shall be reviewed by the CMC. A copy of all tests shall be maintained in the project file.

CMC shall provide verification tests as deemed necessary. The Testing Laboratory personnel shall be qualified and certified as applicable (ASTM, Caltrans, ACI, AWS, etc.) with field testing capabilities for soil, concrete, asphalt, welding, NDE procedures for metal including rail welding, and materials testing to complement the CMC's field inspection staff. The scope of testing shall include, but not be limited to on-site inspections and sampling, laboratory materials testing, and off-site source testing and inspection as needed. All test results shall be timely and accurate, so that the contractors work is not impacted.

C.2.7 Environmental Mitigation Compliance Inspection and Reporting

- a. Follow construction environmental control plan requirements, ensure contractor compliance with environmental permits such as discharge permits and erosion and sedimentation control requirements, mitigations, monitoring and sound management practices. Provide other environmental compliance services requested by SBCTA.
- b. The CMC will coordinate and monitor the need for tailgate briefings based on the construction schedule. The CMC will schedule the briefings between the Contractor and the design consultant. Additionally, the CMC will notify SBCTA of the need for a briefing and include SBCTA in the briefing.

C.2.8 Prevailing Wage Monitoring

- a. All contracts are subject to Federal and State prevailing wage laws. The CMC shall be responsible for the day-to-day administration of all prevailing wage requirements on all construction contracts for the RPRP.
- b. The CMC shall have procedures and processes to verify that the weekly certified payrolls are received for all covered construction workers, including all prime and sub-contractors.
- c. The CMC shall notify SBCTA of any irregularities in the construction contractors' adherence to prevailing wage requirements. In the event of contractor noncompliance with payroll submittal and any other prevailing wage requirements, the CMC shall prepare written notifications to the Prime Contractors itemizing any deficiencies, defining the remedies and noticing of applicable progress payment withholdings and penalties associated with the noncompliance.

C.3 — PHASE 3 — POST-CONSTRUCTION SERVICES CONTRACT CLOSEOUT:

1. Perform final inspection and testing.
2. Prepare comprehensive punch list, resolve outstanding issues, address changes and deficiencies and monitor corrections to completion.
3. Coordinate and schedule final inspections.
4. Balance Change Orders and prepare proposed final estimate. Review and process final payment request.
5. Receive, review, approve, and transmit O&M Manuals from contractor to SBCTA.
6. Produce and issue relief of maintenance and responsibility letter to contractor when authorized.
7. Receive, review, correct, and transmit As-Built Drawings from contractor to SBCTA.
8. Coordinate completion of final reproducible record set of drawings.
9. Receive, review and transmit Warranty/Guarantee documents from contractor to SBCTA.
10. Obtain final acceptance from City of San Bernardino, Omnitrans, utility companies, and any other relevant project stakeholders.
11. Produce and issue Final Acceptance to contractor when authorized by SBCTA.

12. Continue claims support if issues are not resolved prior to construction completion.
13. Assess liquidated damages if the contractor exceeds his allowable number of working days.
14. Expedite closeout process and prepare final closeout report.
15. As-Built Drawings: Ensure construction contractor maintains as-builts and coordinate with design consultant. Document and track all design changes. Review final as-built drawings prepared by design consultant to ensure all changes have been incorporated. Verify that all work was completed in conformance with the plans and specifications and provide a letter to SBCTA to this effect.
16. Warranties: Monitor and track warranties.

D. DELIVERABLES

1. Inspector daily reports, extra work daily diaries and Resident Engineers' daily diaries.
2. Monthly Project Activity Summary Reports.
3. Monthly Contractor progress payments, back-up documentation, and Contractor payment records.
4. Contractor final payment documents, delivered to SBCTA no later than ten (10) working days after acceptance by SBCTA of the completed construction project.
5. All project files, project reports, correspondence, memoranda, shop drawings, project logs, project photo and logs, change order data, claims and claim reports, and Contractor payment records.
6. Certified payrolls and fringe benefit statements for all employees, CMC and Contractor, who are subject to the State and/or Federal prevailing wage rates.
7. All material test results will be provided in accordance with the applicable Standard Specifications and Special Provisions, and test methods. Failing tests will be immediately reported to the Resident Engineer or Structures Representative. All test results will be recorded on the appropriate forms. The test documents will be legible and show the identity of the tester where appropriate. A notebook containing all test results and reports will be maintained by CMC throughout the duration of the RMF project construction and delivered to SBCTA with the project files.

E. EQUIPMENT AND MATERIALS TO BE PROVIDED BY CMC

1. CMC shall provide all necessary equipment including software, materials, supplies, miscellaneous tools, phones, vehicles, and safety equipment required for its personnel to perform the services accurately, efficiently, and safely. The above noted items shall be considered part of the CMCs overhead.
2. CMC personnel shall be provided with vehicles suitable for the location and nature of the work involved.
3. CMC personnel shall be provided with a mobile radio, cellular phone, or other

means to assure full-time communication. If a radio system is to be used, CMC shall provide a base station at the field office.

4. CMC personnel shall be provided with all applicable standard plans, specifications, and other standards as appropriate.
5. For Materials Testing, CMC and its staff will be fully equipped at all times to perform the services required, including but not limited to the following:
 - a. An on-site mobile laboratory or laboratory in close proximity to the project will be required. The type and location of the lab should be such that it can meet the needs of the project in an efficient, time effective manner. The laboratory is to be fully staffed, equipped, and supplied to conduct all required soils, materials, and concrete breaking tests in a timely manner.
 - b. Field personnel will be provided with all necessary safety equipment to permit work to be performed safely and efficiently within operating rail, highway and construction zone environments.
 - c. All equipment to be calibrated as per Section 3-10 and 3-11 of Caltrans' Quality Assurance Program Manual.

F. MATERIALS TO BE FURNISHED BY SBCTA

1. SBCTA will provide three (3) copies of all project construction documents including plans, and special provisions, and one (1) copy of all other reports, designer prepared resident engineer files, and contracts. In addition, SBCTA will provide one (1) full size (24" x 36") sets of plans for use in the construction field office as record documents.
2. SBCTA will provide copies of all previously secured permits and project authorizations.

G. AVAILABILITY AND WORK HOURS

The typical workday includes all hours worked by SBCTA's construction Contractor including nights and weekends. The construction Contractor's operations may be restricted to specific hours during the week, which will become the normal workday for CMC's personnel. On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CMC services will not be provided unless authorized by the SBCTA Project Manager.

Unless otherwise directed by SBCTA, the normal work week will consist of 40 hours. From time to time, overtime may be required. However, overtime will be worked only when approved in writing by SBCTA.

H. LIMITATIONS TO AUTHORITY

CMC does not have the authority to:

1. Authorize deviations from the contract documents.
2. Approve substitute materials or equipment; except as authorized in writing by SBCTA.
3. Conduct or participate in tests or third-party inspections; except as authorized in writing by SBCTA.
4. Assume any of the responsibilities of the Contractors, Contractors' Superintendent, or subcontractors.
5. Exercise control over or be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions.
6. Communicate directly with subcontractors or material suppliers without the prior consent of the Contractor.
7. Verbally authorize or approve change orders or extra work for the RMF Construction project.
8. Offer or receive incentives, inducements; or other forms of enumeration to or from the Contractor to perform services or work outside the terms of any executed contracts for this project.

I. THIRD PARTY RELATIONSHIPS

This Contract is intended to provide unique services for a specific project. In the development of the RPRP, SBCTA has worked closely with various professional CMCs, agencies, and others in the preparation of the construction documents and other project related materials. SBCTA, however, is solely responsible for and will be the sole point of contact for all contractual matters related to the project. CMC shall take direction only from SBCTA and shall regularly inform only SBCTA of project progress, outstanding issues, and all project related matters.

During the course of the RMF project, CMC may find occasion to meet with Stakeholders, City or County representatives, the design engineer, project CMCs, or other third parties who have assisted with the project. These entities may, from time to time, offer suggestions and/or recommendations regarding the project or elements of the project. While SBCTA enjoys a close relationship with and has considerable confidence in the capabilities of these other parties, CMC shall not act on any suggestions, solicited or unsolicited, without obtaining specific direction from SBCTA. All oral and written communication with outside agencies or CMCs related to the project shall be directed only to SBCTA. Distribution of project related communication and information shall be at the sole discretion of SBCTA representatives.

J. CONSTRUCTION SITE SAFETY

In addition to the requirements specified elsewhere in this contract, the following also will apply.

1. CMC will conform to the safety provisions of the SCRRRA Manuals, Rules, and Requirements.

2. CMC's field personnel will wear hard hats with proper suspension, orange vests with reflective tape, sleeved shirt, long pants, and leather boots with ankle support and rubber soled shoes (with steel toes within the railroad right of way) always while working in the field.
3. CMC will provide appropriate safety training for all CMC's personnel, including work on and near highways and railroad right-of-way.
4. All safety equipment will be provided by CMC.

ATTACHMENT B – PROPOSED CONTRACT

CONTRACT No. 18-1001834

BY AND BETWEEN

SBCTA

AND

FOR

**REDLANDS PASSENGER RAIL PROJECT
CONSTRUCTION MANAGEMENT SERVICES
FOR RAIL MAINTENANCE FACILITY (IEMF)**

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 are 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 architectural, engineering, construction management, land surveying and/or materials testing 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 its satisfaction being based on prevailing applicable professional standards.

- 1.2 SBCTA’s Project Manager for this Contract is Andres Ramirez, 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 December 31, 2019, 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 December 31, 2019.

ARTICLE 3. COMPENSATION

- 3.1 SBCTA will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the Work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT’s cost proposal, unless additional reimbursement is provided for by contract amendment. In no event will CONSULTANT be reimbursed for overhead costs at a rate that exceeds SBCTA’s approved overhead rate set forth in the Cost Proposal. In the event SBCTA determines that a change to the Work from that specified in the Cost Proposal and Contract is required, the Contract time or actual costs reimbursable by SBCTA shall be adjusted by contract amendment to accommodate the changed work. The maximum cost as specified herein shall not be exceeded, unless authorized by written amendment.

Escalation shall be at a specific rate, as shown on the Bureau of Labor Statistics Employment Cost Index for Total Compensation for private industry workers Table 5, Private Industry Workers, Occupational Group “Professional and Related” or its successor. The Employment Cost Index will be annually adjusted, apply to total benefits for the private industry economic sector, will not be seasonally adjusted, but will include a

12-month percent change. Escalation shall commence as of (Insert Date/Year), and shall be applied each (Insert Month i.e. January 1st) for the term of the Contract.

- 3.2 In addition to the allowable incurred costs, SBCTA will pay CONSULTANT a fixed fee of \$ (Amount). The fixed fee is nonadjustable for the term of the Contract, except in the event of a significant change in the Scope of Work and such adjustment is made by contract amendment.
- 3.3 Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- 3.4 When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from SBCTA before exceeding such cost estimate.
- 3.5 Progress payments will be made monthly in arrears based on Work performed and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Scope of Work, SBCTA shall have the right to delay payment or terminate this Contract in accordance with the Termination provisions herein.
- 3.6 No payment will be made prior to approval of any Work, nor any Work performed prior to approval of this Contract.
- 3.7 CONSULTANT will be reimbursed as promptly as fiscal procedures will permit upon receipt by SBCTA of itemized invoices. Invoices shall be submitted no later than 45 calendar days after the performance of Work for which CONSULTANT is billing. Invoices shall detail the Work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number. Final invoice must contain the final cost and all credits due SBCTA, including any equipment purchased under the provisions of this Contract. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's Work. Invoices should be e-mailed to SBCTA at the following address:

ap@gosbcta.com
- 3.8 CONSULTANT shall include a statement and release with each invoice, satisfactory to SBCTA, that CONSULTANT has fully performed the Work invoiced pursuant to this 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 the making of such payment. SBCTA shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.
- 3.9 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.
- 3.10 The total amount payable by SBCTA to CONSULTANT including the fixed fee shall not exceed \$ (Insert Amount).

- 3.11 Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by SBCTA's Project Manager. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.
- 3.12 As partial security against CONSULTANT's failure to perform under this Contract, SBCTA shall withhold ten percent (10%) of the total amount of each invoice. CONSULTANT may request a reduction of retention upon acceptable completion of at least 50% of the Work. A written request must be made by CONSULTANT to SBCTA requesting a reduction in retention and the release of up to 50% of all retention being withheld. All retained funds shall be released by SBCTA within sixty (60) calendar days after the last to occur of:
- 3.12.1 Payment of final invoice, unless SBCTA elects to audit CONSULTANT's records in accordance with this Contract. If SBCTA elects to audit, retained funds shall be paid to CONSULTANT within thirty (30) calendar days of completion of the audit in an amount reflecting any adjustments required by such audit; or
- 3.12.2 Final resolution of all Stop Notice claims for payment and/or other claims arising out of the Work done under the Contract.
- 3.13 No payment will be made prior to approval of any Work, nor for any Work performed prior to the NTP, nor for any work under any amendment to the Contract, until approved by SBCTA's Awarding Authority.
- 3.14. 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. Failure to comply with this Article or delay in payment without prior written approval from SBCTA will constitute non-compliance, which may result in appropriate administrative sanctions, including but not limited to a penalty of two percent (2%) of the invoice amount due per month for every month that payment is not made.
- 3.15 If during the course of this Contract additional equipment or supplies are required, which will be paid for SBCTA, CONSULTANT must request prior written authorization from SBCTA before making the purchase. The request must include a justification for the necessity of the equipment or supplies and include copies of three (3) competitive quotations for the equipment or supplies. CONSULTANT shall maintain an inventory record for each piece of equipment purchased that will be paid for by SBCTA. The inventory record shall include the date purchased, total cost, serial number, model identification, and any other information or description necessary to identify the equipment or supplies. At the termination of the Contract, CONSULTANT may keep the

equipment and credit SBCTA in an amount equal to its fair market value. Fair market value shall be determined, at CONSULTANT's expense, on the basis of an independent appraisal. CONSULTANT may sell the equipment at the best price available and credit SBCTA in an amount equal to the sales price. If the equipment is to be sold, the terms of the sale must be approved in advance by SBCTA.

3.16 All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE 4. 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 5. 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 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 6. PERMITS AND LICENSES

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

ARTICLE 7. DOCUMENTATION AND RIGHT TO AUDIT

7.1 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.

7.2 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.

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

ARTICLE 8. RESPONSIBILITY OF CONSULTANT

- 8.1 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.
- 8.2 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. Risks that may be encountered include, but are not limited to, soil conditions, constructability, factors of safety, impact on adjacent properties, impact to railroad operations and safety, public safety, and environmental considerations. At any time during performance of the 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.
- 8.3 When a modification to a construction contract is required because of an error or deficiency in the design Work provided under this Contract, CONSULTANT shall be responsible for any and all additional costs associated with the construction contract or the construction of the Project.
- 8.4 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.
- 8.5 CONSULTANT shall, document the results of the Work to the satisfaction of SBCTA and if applicable, Federal Transit Administration (FTA), Federal Railroad Administration (FRA) 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.

- 8.6 As applicable, the responsible consultant/engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, certify as-built drawings, and where appropriate, indicate his/her California registration or license number.
- 8.7 CONSULTANT shall produce construction documents, specifically plans and specifications, which specify compliance with FTA, FRA and Buy America requirements.

ARTICLE 9. 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 10. TECHNICAL DIRECTION

- 10.1 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:
 - 10.1.1 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.
 - 10.1.2 Provision of written information to CONSULTANT, which assists in the interpretation of drawings, reports, or technical portions of the Scope of Work described herein.
 - 10.1.3 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.
 - 10.1.4 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.
- 10.2 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:
 - 10.2.1 Increases or decreases the Scope of Work;
 - 10.2.2 Directs CONSULTANT to perform Work outside the original Scope of Work;

- 10.2.3 Constitutes a change as defined in the “CHANGES” Article of the Contract;
 - 10.2.4 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;
 - 10.2.5 Changes any of the expressed terms, conditions or specifications of the Contract; unless identified herein;
 - 10.2.6 Interferes with the CONSULTANT’s right to perform the terms and conditions of the Contract; or
 - 10.2.7 Approves any demand or claim for additional payment.
- 10.3 Failure of CONSULTANT and SBCTA’s Project Manager to agree that the Technical Direction is within the scope of the Contract, or failure to agree upon the Contract action to be taken, shall be subject to the provisions of the “DISPUTES” Article herein.
- 10.4 All Technical Direction shall be issued in writing by SBCTA’s Project Manager.
- 10.5 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 its 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 10.2.1 through 10.2.7 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:
- 10.5.1 Advise CONSULTANT in writing within thirty (30) calendar days after receipt of the CONSULTANT's letter that the Technical Direction either is or is not Technical Direction, as defined in 10.1 above, and within the Scope of Work.
 - 10.5.2 Advise CONSULTANT within a reasonable time whether SBCTA will or will not issue a written amendment.

ARTICLE 11. CHANGES

- 11.1 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.
- 11.2 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 12. 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 13. 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 reallocating any tasks or hours of Work that are the responsibility of key personnel to other personnel, CONSULTANT shall notify SBCTA in writing 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 14. 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 15. PROPRIETARY RIGHTS/CONFIDENTIALITY

- 15.1 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, which shall become the sole property of SBCTA.
- 15.2 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.
- 15.3 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 of or an unauthorized disclosure by 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 shall not be publicly disclosed 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.

- 15.4 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.
- 15.5 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 16. CONSTRUCTION CLAIMS.

- 16.1 If claims are filed by SBCTA's construction contractor and additional information or assistance from the CONSULTANT's personnel is required in order to evaluate or defend against such claims, CONSULTANT agrees to make its personnel available for consultation with SBCTA's construction contract administrator and legal staff, and for testimony, if necessary, at depositions, administrative proceedings, trial or arbitration proceedings.
- 16.2 CONSULTANT's personnel that SBCTA considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from SBCTA. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the CONSULTANT's personnel under this Contract.
- 16.3 Services of the CONSULTANT's personnel in connection with SBCTA's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Contract in order to finally resolve the claims.

ARTICLE 17. TERMINATION

- 17.1 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.

- 17.1.1 CONSULTANT shall deliver to SBCTA, all documents, inspection daily reports, extra work daily diaries, monthly project activity summary reports, monthly construction progress payments, back-up documents and contractor payment record, material testing reports prepared by CONSULTANT or its subconsultants or any and all documents furnished to CONSULTANT by SBCTA. Upon such delivery, CONSULTANT may then invoice SBCTA for payment in accordance with the terms herein.
- 17.1.2 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.
- 17.1.3 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.
- 17.2 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.
- 17.2.1 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.
- 17.2.2 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.
- 17.3 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 18. 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 19. 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 20. INSURANCE

20.1 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:

20.1.1 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.

20.1.2 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.

20.1.3 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.

20.1.4 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.

20.1.5 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.

20.1.6 Pollution Liability The policy must include the following if it is determined by SBCTA's Risk Manager to be in SBCTA's best interests to require such policy:

- \$2,000,000 per claim or occurrence limits/\$4,000,000 in the aggregate
- There shall be no deductible
- If the services involve mold identification / remediation, the policy shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.
- If the services involve lead-based paint or asbestos identification/remediation, the policy shall not contain lead-based paint or asbestos exclusions.

20.1.7 Railroad Protective Liability The policy must include the following:

- Should the CONSULTANT need to perform activities in a railroad right-of-way, SBCTA's Risk Manager and/or a railroad operator may require CONSULTANT to provide Railroad Protective Liability.
- In such a case, the policy shall be in amounts and coverages and from issuers acceptable to SBCTA's Risk Manager in his/her sole discretion.
- Depending on facts and circumstances, and the terms and conditions of the policy involved, SBCTA's Risk Manager may choose to find that the CONSULTANT satisfactorily meets this requirement by obtaining one of the following: a) an acceptable Railroad Protective Liability specific policy; b) a waiver of any railroad liability exclusion from the CONSULTANT's existing general liability policy; or c) acceptable general liability insurance without a railroad exclusion.

20.2 General Provisions

20.2.1 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.

- 20.2.2 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.
- 20.2.3 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.
- 20.2.4 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.
- 20.2.5 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' pollution, automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.
- 20.2.6 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.

20.2.7 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.

20.2.8 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.

20.2.9 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.

20.2.10 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.

20.2.11 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.

20.2.12 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 21. INDEMNITY

21.1 To the extent, but only to the extent, that CONSULTANT's Work falls within the scope of Civil Code Section 2782.8, the following indemnification is applicable:

CONSULTANT shall indemnify and defend (with legal counsel reasonably approved by SBCTA) San Bernardino County Transportation Commission, San Bernardino County Transportation Authority, San Bernardino County Service Authority for Freeway Emergencies and San Bernardino Congestion Management Agency, and their officers, directors, members, employees, agents and volunteers (collectively the "Indemnitees") from any and all losses, damages, liability, actions, and/or costs for claims that arise out of, pertain to, or are related to the negligence, recklessness, or willful misconduct of the design professional.

21.2 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. CONSULTANT's indemnification obligation applies to SBCTA's "active" as well as "passive" negligence but does not apply to SBCTA's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

ARTICLE 22. 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 23. 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 24. SUBCONTRACTS

- 24.1 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.
- 24.2 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.
- 24.3 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 25. INSPECTION OF OPERATIONS

SBCTA its designees, representatives and 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 26. 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 27. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any Party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and 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 28. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

ARTICLE 29. 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 30. PRECEDENCE

- 30.1 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.
- 30.2 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.
- 30.3 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 31. 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: Andres Ramirez |
| | cc: Procurement Manager |
| Phone: | Phone: (909) 884-8276 |
| Email: | aramirez@gosbcta.com |

ARTICLE 32. DISPUTES

- 32.1 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 notice thereof in writing 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.
- 32.2 During resolution of the dispute, CONSULTANT shall proceed with performance of the Contract with due diligence.

ARTICLE 33. 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 34. 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 35. 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 36. 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 37. 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. CONSULTANT shall comply with safety instructions issued by SBCTA and their representatives. CONSULTANT personnel shall wear personnel protective equipment (PPE) at all times while on the project construction site. For work around an active railroad, CONSULTANT and all subconsultants shall comply with the operating railroads PPE requirements. At a minimum, PPE shall be hard hats, orange reflectorized safety vests and safety glasses.

ARTICLE 38. DRUG FREE WORKPLACE

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

ARTICLE 39. 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 40. DEBARMENT AND SUSPENSION CERTIFICATION

40.1 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 neither the CONSULTANT, its principals, as defined at 2 CFR 180.995, nor affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940 and 180.935. 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.

40.2 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 41. PREVAILING WAGE RATES

41.1 CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Sections 1770 et seq., and all Federal, State, and local laws and ordinances applicable to the Work.

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

ARTICLE 42. 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 43. 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 44. 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 45. CIVIL RIGHTS

45.1 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.

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

45.2.1 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 CFR Parts 60 et seq., and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken 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.

45.2.2 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.

45.2.3 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue.

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

ARTICLE 46. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period due to CONSULTANT’s failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE 47. CONFLICT OF INTEREST

47.1 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.

- 47.2 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.
- 47.3 Any subcontract in excess of \$25,000 entered into as a result of this Contract, shall contain all of the provisions of this Article.
- 47.4 CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or any contract to provide construction inspection for any construction project resulting from this Contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 47.5 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this Contract shall be eligible to bid on any construction contract, or any contract to provide construction inspection for any construction project resulting from this Contract.
- 47.6 Except for subconsultants whose services are limited to materials testing, no subconsultant who is providing services on this Contract shall have provided services on the design of any project included within this Contract.

ARTICLE 48. 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 49. PROHIBITION OF EXPENDING SBCTA, STATE OR FEDERAL FUNDS FOR LOBBYING

- 49.1 CONSULTANT certifies, to the best of his or her knowledge and belief, that:
- 49.1.1 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.
- 49.1.2 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.

49.2 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.

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

ARTICLE 50. 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 51. 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 52. 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 53. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- 53.1 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 CFR 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.
- 53.2 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. §5323(l)(1) *et seq.* on CONSULTANT, to the extent the Federal Government deems appropriate.
- 53.3 CONSULTANT shall include the requirements of this Article in all of its subcontracts.

ARTICLE 54. 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 U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247, as they apply 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 55. 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 56. 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 57. 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. § 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 58. FLY AMERICA REQUIREMENTS

CONSULTANT agrees to comply with 49 U.S.C. § 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for 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 59. SEISMIC SAFETY REQUIREMENTS

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

ARTICLE 60. 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 61. ENTIRE DOCUMENT

61.1 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.

- 61.2 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.
- 61.3 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 62. CONTRACT

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

ARTICLE 63. 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: _____
Alan D. Wapner
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 _____, 20__

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 (Continuation Sheet)

Reporting Entity: _____

Page _____ of _____

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INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION TITLE 2 CODE OF FEDERAL REGULATIONS PART 180

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 48 CFR part 9, subpart 9.4, 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 preceding 12 months shall be aggregated with those made by Bidder’s agent within the preceding 12 months or the period of the agency relationship between the Bidder and Bidder’s agent, whichever is shorter. In addition, Bidder and/or Bidder’s agent shall not make a contribution of more than \$250 to a Director or alternate during the Proceeding and for 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 | Rick Herrick |
| City of Chino | Eunice Ulloa | Tom Haughey |
| City of Chino Hills | Ray Marquez | 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 | John Dutrey | Bill Ruh |
| 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 | N/A |
| 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 |