



AGENDA
Mountain/Desert Policy Committee

September 13, 2024

9:30 AM

Location

Mojave Desert Air Quality Management District
Mojave Desert Air Quality Management District
14306 Park Avenue, Victorville, CA 92392

TELECONFERENCING WILL BE AVAILABLE AT THE FOLLOWING LOCATION:

Needles City Hall
817 Third Street
Needles, CA 92363

Mountain/Desert Policy Committee Membership

Chair

Debra Jones, Council Member
City of Victorville

Carmen Hernandez, Council Member
City of Barstow

Rick Denison, Council Member
Town of Yucca Valley

Vice Chair

Rebekah Swanson, Mayor Pro Tem
City of Hesperia

Rick Herrick, Council Member
City of Big Bear Lake

Paul Cook, Supervisor
County of San Bernardino

Daniel Ramos, Mayor Pro Tem
City of Adelanto

Janet Jernigan, Mayor
City of Needles

Dawn Rowe, Supervisor
County of San Bernardino

Art Bishop, Mayor Pro Tem
Town of Apple Valley

Joel Klink, Mayor Pro Tem
City of Twentynine Palms

**San Bernardino County Transportation Authority
San Bernardino Council of Governments**

AGENDA

Mountain/Desert Policy Committee

September 13, 2024

9:30 AM

Location

**Mojave Desert Air Quality Management District
14306 Park Avenue, Victorville, CA 92392**

TELECONFERENCING WILL BE AVAILABLE AT THE FOLLOWING LOCATION:

**Needles City Hall
817 Third Street
Needles, CA 92363**

Items listed on the agenda are intended to give notice to members of the public of a general description of matters to be discussed or acted upon. The posting of the recommended actions does not indicate what action will be taken. The Board may take any action that it deems to be appropriate on the agenda item and is not limited in any way by the notice of the recommended action.

To obtain additional information on any items, please contact the staff person listed under each item. You are encouraged to obtain any clarifying information prior to the meeting to allow the Board to move expeditiously in its deliberations. Additional *“Meeting Procedures”* and agenda explanations are attached to the end of this agenda.

CALL TO ORDER

(Meeting Chaired by Debra Jones)

- i. Pledge of Allegiance
- ii. Attendance
- iii. Announcements
- iv. Agenda Notices/Modifications – Betty Pineda

Public Comment

Brief Comments from the General Public

Note: Public Comment on items listed on this agenda will be allowed only during this committee meeting. No public comment will be allowed on committee items placed on the Consent Agenda at the Board of Directors meeting. If an item has substantially changed after consideration during the committee meeting, the item will be placed on Discussion for Board and public comment will be allowed.

Possible Conflict of Interest Issues

Note agenda item contractors, subcontractors and agents which may require member abstentions due to conflict of interest and financial interests. Board Member abstentions shall be stated under this item for recordation on the appropriate item.

1. Information Relative to Possible Conflict of Interest

Pg. 11

Note agenda items and contractors/subcontractors, which may require member abstentions due to possible conflicts of interest.

This item is prepared for review by Board and Committee members.

DISCUSSION ITEMS

Discussion - Regional/Subregional Planning

2. Contract No. 25-1003202 with Nikola Corporation for Hydrogen Truck Fueling Station in the City of Victorville

Pg. 13

That the Mountain/Desert Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Authorize the Executive Director, or his designee, to finalize and execute Contract No. 25-1003202 with Nikola Corporation for construction of a Hydrogen Truck Fueling Station in the City of Victorville for an amount not to exceed \$5,000,000 and a term ending March 31, 2031, subject to approval as to form by SBCTA General Counsel.

B. Authorize an exception to SBCTA Contracting and Procurement Policy No. 11000 Section IV.B.4, to allow for a contract term of six years and five months, given that the policy limits contracts to a five-year term, absent SBCTA Board approval.

Presenter: Steve Smith

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel, Risk Manager and Procurement Manager have reviewed this item and the draft contract.

Discussion - Project Delivery

3. US 395 Phase 2 Widening Project – Construction Management Services Contract Award

Pg. 43

That the Mountain/Desert Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Allocate \$500,000 in Measure I Victor Valley Major Local Highway Projects Program funds to the US 395 Phase 2 Widening Project to allow for constructability review prior to authorization of Federal funds for Construction Management Services.

B. Authorize the Executive Director, or his designee, to award and execute Contract No. 24-1003120 with WSP USA, Inc., to provide Construction Management Services for the US 395 Phase 2 Widening Project, in an amount not-to-exceed \$6,969,268.77, to be funded with Measure I Victor Valley Major Local Highway Projects Program funds and Federal Surface Transportation Block Grant Program funds, upon receipt of the Pre-Award Audit and subject to approval as to form by SBCTA General Counsel.

Agenda Item 3 (cont.)

C. Authorize the Executive Director, or his designee, to approve a 10% contingency budget, to be released in accordance with SBCTA Contracting and Procurement Policy No. 11000, VIII.B.6.

Presenter: David Tan

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel, Procurement Manager, and Enterprise Risk Manager have reviewed this item and the draft contract.

4. US 395 Phase 2 Project Preview of the Hearings to Consider Resolutions of Necessity for Property interests within the Cities of Hesperia and Victorville Pg. 118

That the following be reviewed and recommended for final approval by the Board of Directors (Board), acting as the San Bernardino County Transportation Authority, at a regularly scheduled Board meeting:

A. Conduct public hearings to consider condemnation of real property required for the US 395 Phase 2 Project in the Cities of Hesperia and Victorville.

B. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-010 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: The Jennifer Lichuan Ko Family Trust (Assessor's Parcel Number 3136-261-06). The resolution must be approved by at least a two-thirds majority.

C. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-013 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: The Camp and Julia Second Family Limited Partnership (Assessor's Parcel Number 3136-251-02). The resolution must be approved by at least a two-thirds majority.

D. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-014 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: Shahin Trust (Assessor's Parcel Number 3134-121-42). The resolution must be approved by at least a two-thirds majority.

E. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-015 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: 395 Properties 26, LLC (Assessor's Parcel Number 3096-361-04). The resolution must be approved by at least a two-thirds majority.

F. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-016 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: Lighthouse Petroleum-Victorville, LLC (Assessor's Parcel Number 3071-331-11). The resolution must be approved by at least a two-thirds majority.

G. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-017 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: City of Victorville (Assessor's Parcel Number 3096-361-10). The resolution must be approved by at least a two-thirds majority.

Agenda Item 4 (cont.)

H. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-018 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: 395, LLC (Assessor's Parcel Number 3064-591-01 and 3064-591-03). The resolution must be approved by at least a two-thirds majority.

I. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-019 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: Jagroop Dhillon (Assessor's Parcel Number 3064-381-07). The resolution must be approved by at least a two-thirds majority.

J. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-020 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: Hanna Trust (Assessor's Parcel Number 3064-381-05). The resolution must be approved by at least a two-thirds majority.

K. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-021 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: The S & P Family Trust (Assessor's Parcel Number 3064-381-29). The resolution must be approved by at least a two-thirds majority.

L. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-022 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: Varinder Paul Sangha (Assessor's Parcel Number 3064-371-12). The resolution must be approved by at least a two-thirds majority.

M. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-023 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: The Hazboon Family Trust (Assessor's Parcel Number 3064-371-11). The resolution must be approved by at least a two-thirds majority.

N. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-024 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: JM Built Corporation (Assessor's Parcel Number 3064-371-08). The resolution must be approved by at least a two-thirds majority.

O. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-025 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: Daniel Lindsey Song (Assessor's Parcel Number 3064-371-06). The resolution must be approved by at least a two-thirds majority.

P. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-026 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: MPNR Properties, LLC/Farsai's, LLC (Assessor's Parcel Number 3039-361-09). The resolution must be approved by at least a two-thirds majority.

Presenter: Sal Chavez

Agenda Item 4 (cont.)

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel has reviewed this item. The RONS were prepared and reviewed by outside ROW Counsel.

Comments from Board Members

Brief Comments from Board Members

ADJOURNMENT

Additional Information

Attendance

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Acronyms

Pg. 137

Mission Statement

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The next Mountain/Desert Policy Committee meeting is scheduled for October 11, 2024.

Meeting Procedures and Rules of Conduct

Meeting Procedures - The Ralph M. Brown Act is the state law which guarantees the public's right to attend and participate in meetings of local legislative bodies. These rules have been adopted by the Board of Directors in accordance with the Brown Act, Government Code 54950 et seq., and shall apply at all meetings of the Board of Directors and Policy Committees.

Accessibility & Language Assistance - The meeting facility is accessible to persons with disabilities. A designated area is reserved with a microphone that is ADA accessible for public speaking. A designated section is available for wheelchairs in the west side of the boardroom gallery. If assistive listening devices, other auxiliary aids or language assistance services are needed in order to participate in the public meeting, requests should be made through the Clerk of the Board at least three (3) business days prior to the Board meeting. The Clerk can be reached by phone at (909) 884-8276 or via email at clerkoftheboard@gosbcta.com and office is located at 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA.

Service animals are permitted on SBCTA's premises. The ADA defines service animals as dogs or miniature horses that are individually trained to do work or perform tasks for people with disabilities. Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work, or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

Accesibilidad y asistencia en otros idiomas - Las personas con discapacidad pueden acceder a la sala de reuniones. Se reserva una zona designada con un micrófono accesible que cumple con los requisitos de la ADA para hablar en público. Una sección designada está disponible para sillas de ruedas en el lado oeste de la galería de la sala de reuniones. Si se necesitan dispositivos de ayuda auditiva, otras ayudas auxiliares o servicios de asistencia en otros idiomas para participar en la reunión pública, las solicitudes deben presentarse al Secretario de la Junta al menos tres (3) días hábiles antes de la fecha de la reunión de la Junta. Puede comunicarse con el Secretario llamando al (909) 884-8276 o enviando un correo electrónico a clerkoftheboard@gosbcta.com. La oficina se encuentra en 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA.

Los animales de servicio están permitidos en las instalaciones de SBCTA. La ADA define a los animales de servicio como perros o caballos miniatura que son entrenados individualmente para hacer trabajo o realizar tareas para personas con discapacidades. Según la ADA, los animales de servicio deben tener un arnés o ser atados, a menos que estos dispositivos interfieran con el trabajo del animal de servicio, o que la discapacidad de la persona impida el uso de estos dispositivos. En ese caso, la persona debe mantener el control del animal a través de su voz, señales u otros controles efectivos.

Agendas – All agendas are posted at www.gosbcta.com/board/meetings-agendas/ at least 72 hours in advance of the meeting. Staff reports related to agenda items may be reviewed online at that web address. Agendas are also posted at 1170 W. 3rd Street, 1st Floor, San Bernardino at least 72 hours in advance of the meeting.

Agenda Actions – Items listed on both the “Consent Calendar” and “Discussion” contain recommended actions. The Board of Directors will generally consider items in the order listed on the agenda. However, items may be considered in any order. New agenda items can be added and action taken as provided in the Ralph M. Brown Act Government Code Sec. 54954.2(b).

Closed Session Agenda Items – Consideration of closed session items excludes members of the public. These items include issues related to personnel, pending litigation, labor negotiations and real estate negotiations. Prior to each closed session, the President of the Board or Committee Chair (“President”) will announce the subject matter of the closed session. If reportable action is taken in closed session, the President shall report the action to the public at the conclusion of the closed session.

Public Testimony on an Item – Members of the public are afforded an opportunity to speak on any listed item, except Board agenda items that were previously considered at a Policy Committee meeting where there was an opportunity for public comment. Individuals in attendance at SBCTA who desire to speak on an item may complete and turn in a "Request to Speak" form, specifying each item an individual wishes to speak on. Individuals may also indicate their desire to speak on an agenda item when the President asks for public comment. When recognized by the President, speakers should be prepared to step forward and announce their name for the record. In the interest of facilitating the business of the Board, speakers are limited to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Board at any one meeting. The President or a majority of the Board may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations. Any individual who wishes to share written information with the Board may provide 35 copies to the Clerk of the Board for distribution. If providing written information for distribution to the Board, such information must be emailed to the Clerk of the Board, at clerkoftheboard@gosbcta.com, no later than 5:00 pm the day before the meeting in order to allow sufficient time to distribute the information. Information provided as public testimony is not read into the record by the Clerk. Consent Calendar items can be pulled at Board member request and will be brought up individually at the specified time in the agenda. Any consent item that is pulled for discussion shall be treated as a discussion item, allowing further public comment on those items.

Public Comment –An opportunity is also provided for members of the public to speak on any subject within the Board’s jurisdiction. Matters raised under “Public Comment” will not be acted upon at that meeting. See, “Public Testimony on an Item,” above.

Disruptive or Prohibited Conduct – If any meeting of the Board is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the President may recess the meeting or order the person, group or groups of person willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive or prohibited conduct includes without limitation addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, bringing into the meeting any type of object that could be used as a weapon, including without limitation sticks affixed to signs, or otherwise preventing the Board from conducting its meeting in an orderly manner.

Your cooperation is appreciated!

**General Practices for Conducting Meetings
of
Board of Directors and Policy Committees**

Attendance.

- The President of the Board or Chair of a Policy Committee (Chair) has the option of taking attendance by Roll Call. If attendance is taken by Roll Call, the Clerk of the Board will call out by jurisdiction or supervisorial district. The Member or Alternate will respond by stating his/her name.
- A Member/Alternate who arrives after attendance is taken shall announce his/her name prior to voting on any item.
- A Member/Alternate who wishes to leave the meeting after attendance is taken but before remaining items are voted on shall announce his/her name and that he/she is leaving the meeting.

Basic Agenda Item Discussion.

- The Chair announces the agenda item number and states the subject.
- The Chair calls upon the appropriate staff member or Board Member to report on the item.
- The Chair asks members of the Board/Committee if they have any questions or comments on the item. General discussion ensues.
- The Chair calls for public comment based on “Request to Speak” forms which may be submitted.
- Following public comment, the Chair announces that public comment is closed and asks if there is any further discussion by members of the Board/Committee.
- The Chair calls for a motion from members of the Board/Committee. Upon a motion, the Chair announces the name of the member who makes the motion. Motions require a second by a member of the Board/Committee. Upon a second, the Chair announces the name of the Member who made the second, and the vote is taken.
- The “aye” votes in favor of the motion shall be made collectively. Any Member who wishes to oppose or abstain from voting on the motion shall individually and orally state the Member’s “nay” vote or abstention. Members present who do not individually and orally state their “nay” vote or abstention shall be deemed, and reported to the public, to have voted “aye” on the motion.
- Votes at teleconferenced meetings shall be by roll call, pursuant to the Brown Act, or, at any meeting, upon the demand of five official representatives present or at the discretion of the presiding officer.

The Vote as specified in the SBCTA Administrative Code and SANBAG Bylaws.

- Each Member of the Board of Directors shall have one vote. In the absence of the official representative, the Alternate shall be entitled to vote. (Note that Alternates may vote only at meetings of the Board of Directors, Metro Valley Study Session and Mountain/Desert Policy Committee.)

Amendment or Substitute Motion.

- Occasionally a Board Member offers a substitute motion before the vote on a previous motion. In instances where there is a motion and a second, the Chair shall ask the maker of the original motion if he or she would like to amend the motion to include the substitution or withdraw the motion on the floor. If the maker of the original motion does not want to amend or withdraw, the substitute motion is voted upon first, and if it fails, then the original motion is considered.
- Occasionally, a motion dies for lack of a second.

Call for the Question.

- At times, a Member of the Board/Committee may “Call for the Question.”
- Upon a “Call for the Question,” the Chair may order that the debate stop or may allow for limited further comment to provide clarity on the proceedings.
- Alternatively, and at the Chair’s discretion, the Chair may call for a vote of the Board/Committee to determine whether or not debate is stopped.
- The Chair re-states the motion before the Board/Committee and calls for the vote on the item.

The Chair.

- At all times, meetings are conducted in accordance with the Chair’s direction.
- These general practices provide guidelines for orderly conduct.
- From time to time, circumstances may require deviation from general practice (but not from the Brown Act or agency policy).
- Deviation from general practice is at the discretion of the Chair.

Courtesy and Decorum.

- These general practices provide for business of the Board/Committee to be conducted efficiently, fairly and with full participation.
- It is the responsibility of the Chair and Members to maintain common courtesy and decorum.

Adopted By SANBAG Board of Directors January 2008

Revised March 2014

Revised May 4, 2016

Revised June 7, 2023

Minute Action

AGENDA ITEM: 1

Date: *September 13, 2024*

Subject:

Information Relative to Possible Conflict of Interest

Recommendation:

Note agenda items and contractors/subcontractors, which may require member abstentions due to possible conflicts of interest.

Background:

In accordance with California Government Code 84308, members of the Board may not participate in any action concerning a contract where they have received a campaign contribution of more than \$250 in the prior twelve months from an entity or individual, except for the initial award of a competitively bid public works contract. This agenda contains recommendations for action relative to the following contractors:

Item No.	Contract No.	Principals & Agents	Subcontractors
2	25-1003202	Nikola Corporation <i>N/A</i>	None
3	24-1003120	WSP USA, Inc. <i>Derich Sukow</i>	B&R Consulting Engineers, Inc. Guida Surveying, Inc. MTGL, Inc. Dynamic Engineering Services, Inc. ZT Consulting Group, Inc.

Item No. 4 – US 395 Phase 2 Preview of Hearing to Consider Resolution of Necessity

APN#	Principals & Agents
3136-261-06	The Jennifer Lichuan Ko Family Trust
3136-251-02	The Camp and Julia Second Family Limited Partnership
3134-121-42	Shahin Trust
3096-361-04	395 Properties 26, LLC
3071-331-11	Lighthouse Petroleum-Victorville, LLC
3096-361-10	City of Victorville
3064-591-01	395, LLC
3064-591-03	395, LLC
3064-381-07	Jagroop Dhillon
3064-381-05	Hanna Trust
3064-381-29	The S & P Family Trust
3064-371-12	Varinder Paul Sangha
3064-371-11	The Hazboon Family Trust
3064-371-08	JM Built Corporation

Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority

3064-371-06	Daniel Lindsey Song
3039-361-09	MPNR Properties, LLC/Farsai's, LLC

Financial Impact:

This item has no direct impact on the budget.

Reviewed By:

This item is prepared for review by Board and Committee members.

Responsible Staff:

Andrea Zureick, Director of Fund Administration

Approved
Mountain-Desert Committee
Date: September 13, 2024

Witnessed By:

Minute Action

AGENDA ITEM: 2

Date: *September 13, 2024*

Subject:

Contract No. 25-1003202 with Nikola Corporation for Hydrogen Truck Fueling Station in the City of Victorville

Recommendation:

That the Mountain/Desert Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Authorize the Executive Director, or his designee, to finalize and execute Contract No. 25-1003202 with Nikola Corporation for construction of a Hydrogen Truck Fueling Station in the City of Victorville for an amount not to exceed \$5,000,000 and a term ending March 31, 2031, subject to approval as to form by SBCTA General Counsel.

B. Authorize an exception to SBCTA Contracting and Procurement Policy No. 11000 Section IV.B.4, to allow for a contract term of six years and five months, given that the policy limits contracts to a five-year term, absent SBCTA Board approval.

Background:

In 2017, the State Legislature passed, and the Governor signed, Senate Bill 1 (SB 1), known as the Road Repair and Accountability Act, increasing transportation funding and instituting transportation funding reforms. One of the key competitive programs funded by SB 1 is the Trade Corridor Enhancement Program (TCEP), targeted at \$300 million in grant funding per year. The TCEP provides an ongoing source of State funding dedicated to freight-related projects.

This statewide competitive program provides funding for infrastructure improvements on federally designated Trade Corridors of National and Regional Significance on the Primary Freight Network and along corridors that have a high volume of freight movement. The program is administered by the California Transportation Commission (CTC).

Consistent with the SB 1 Grant Application Strategy presented to the San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) in November 2021, SBCTA staff submitted TCEP applications requesting funding for the Interstate 10 (I-10) Corridor Freight and Managed Lane Project, Contract 2 (I-10 Contract 2) and the US 395 Freight Mobility and Safety Project, Phase 2. On June 28, 2023, the CTC adopted the Program of Projects for the 2022 TCEP, awarding \$85 million to the I-10 project and \$35 million to the US 395 project. The award for the US 395 project included \$5 million to partially fund a hydrogen truck fueling station in the City of Victorville.

The CTC Accountability and Transparency Guidelines require SBCTA to enter into a Baseline Agreement with the California Department of Transportation (Caltrans) and the CTC for any project receiving TCEP funds. The Baseline Agreement sets forth the agreed upon expected project benefits, scope, schedule, and cost, and provides a benchmark for comparison to the current status of the project and the forecast of conditions under a no-build scenario. Baseline Agreements identify the agency responsible for meeting the reporting requirements and,

Entity: San Bernardino County Transportation Authority

Mountain-Desert Committee Agenda Item

September 13, 2024

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for locally implemented projects, identify Caltrans' responsibilities relative to the type and location of the project. Additionally, the CTC considers the Baseline Agreement as the front-end document that forms the foundation for in-progress and follow-up accountability. The Baseline Agreement for the US 395 Phase 2 project was approved by the CTC in March 2024.

The next step in the process that leads to project construction is "funding allocation," at which time the grant funding is considered secured, and the allocated phase of the project can advance to construction. The first phase ready for construction for US 395 Phase 2 is the Nikola Hydrogen Truck Fueling Station at the Southern California Logistics Airport (SCLA), and the CTC expects that an agreement for construction between the grantee (SBCTA) and the vendor (Nikola Corporation) will be made available along with the allocation request. The allocation request is scheduled to go to the CTC for approval in October 2024, making the October 2nd SBCTA Board meeting the last meeting prior to the CTC meeting where the agreement can be approved. Given that final wording of the agreement between SBCTA and Nikola Corporation is being negotiated, staff is requesting that the Executive Director, or his designee, be authorized to execute Contract No. 25-1003202 once final wording has been settled and General Counsel has approved it as to form.

Contract No. 25-1003202 covers procurement of hydrogen station equipment and construction at the Nikola station at SCLA. Caltrans also has a TCEP commitment for a portion of the station, which will be covered under a separate agreement between Caltrans and Nikola.

The total estimated cost to construct the SBCTA portion of the station is \$7,250,000. The TCEP dollars will fund \$5,000,000 of this cost, with Nikola funding the matching \$2,250,000 of the total estimated cost. The agreement stipulates that Nikola will operate and maintain the site for a minimum of five years after construction acceptance by SBCTA. Construction acceptance is expected by March 31, 2026, so that the contract will terminate March 31, 2031. This six-year, five-month term requires an exception to SBCTA Contracting Policy IV.B.4, which states: "*Unless otherwise authorized by the Board, the maximum term for Contracts or Purchase Orders shall be five years*" The project will also require a public interest finding from Caltrans District 8 that a non-competitive contract is acceptable, given this was part of a packaged grant award.

Financial Impact:

The project is included in the adopted Budget for Fiscal Year 2024/2025 and funded with state SB 1 Trade Corridor Enhancement Program funds in Program 20, Planning.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel, Risk Manager and Procurement Manager have reviewed this item and the draft contract.

Responsible Staff:

Steve Smith, Director of Planning & Regional Programs

Approved
Mountain-Desert Committee
Date: September 13, 2024
Witnessed By:

General Contract Information

Contract No: 25-1003202 Amendment No.: _____
 Contract Class: Payable Department: Planning and Regional
 Vendor No.: xxxxx Vendor Name: Nikola Corporation
 Description: Hydrogen Truck Fueling Station in the City of Victorville

List Any Related Contract Nos.: _____

Dollar Amount					
Original Contract	\$	5,000,000.00	Original Contingency	\$	-
Prior Amendments	\$	-	Prior Amendments	\$	-
Prior Contingency Released	\$	-	Prior Contingency Released (-)	\$	-
Current Amendment	\$	-	Current Amendment	\$	-
Total/Revised Contract Value	\$	5,000,000.00	Total Contingency Value	\$	-
Total Dollar Authority (Contract Value and Contingency)				\$	5,000,000.00

Contract Authorization

Board of Directors _____ Date: 10/2/2024 _____ Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Capital Project Contracts _____ Sole Source? No _____ No Budget Adjustment _____
 State _____ Construction _____ N/A _____

Accounts Payable

Estimated Start Date: 11/1/2024 Expiration Date: 3/31/2031 Revised Expiration Date: _____
 NHS: No QMP/QAP: No Prevailing Wage: Yes

							Total Contract Funding:		Total Contingency:		
Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	\$		\$	
GL: 2704	20	0404	0000	53701	42217701		SB 1 TCEP	5,000,000.00		-	
GL:								5,000,000.00		-	
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 Steve Smith
 Project Manager (Print Name)

 Steve Smith
 Task Manager (Print Name)

Additional Notes: _____

Attachment: CSS - Revised - 08-25-2022 10.11am [Revision 1] (10872 : Contract No. 25-1003202 with Nikola Corporation for Hydrogen Truck

CONTRACT NO. 25-1003202**BY AND BETWEEN****SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY****AND****NIKOLA CORPORATION****FOR****HYDROGEN TRUCK FUELING STATION IN THE CITY OF VICTORVILLE**

This contract ("Contract") is effective on the Effective Date as defined herein, by and between San Bernardino County Transportation Authority ("SBCTA"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715, and Nikola Corporation ("CONTRACTOR") whose address is 4141 East Broadway Road Phoenix, AZ 85040. SBCTA and CONTRACTOR are each a "Party" and collectively the "Parties" herein.

RECITALS:

WHEREAS, the California Transportation Commission (CTC) adopted the 2022 Trade Corridor Enhancement Program (TCEP) – Program of Projects, by means of Resolution G-23-46, on June 28, 2023; and

WHEREAS, CTC awarded SBCTA TCEP funds for the US 395 Freight Mobility and Safety Project; and

WHEREAS, SBCTA had included funding for the Nikola Hydrogen Fueling Station in the City of Victorville (PROJECT) as part of its TCEP funding application; and

WHEREAS, Nikola Corporation, is an Arizona(???) corporation with its principal office at 4141 East Broadway Road Phoenix, AZ 85040; and,

WHEREAS, Nikola Corporation, is a constructor and operator of hydrogen truck charging stations; and,

WHEREAS, completion of the PROJECT will accelerate the transition to zero-emission trucks and improve air quality in San Bernardino County and reduce greenhouse gas emissions overall;

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE 1. PROJECT DESCRIPTION

The PROJECT includes construction of a hydrogen truck fueling station in Victorville, CA, located on the grounds of the Southern California Logistics Airport, 13640 Phantom East, which will become part of a hydrogen fuel network for Southern California. The fueling station will be open to the public and accommodate heavy-duty zero emission vehicles (ZEVs). The station is part of the Interstate 10 Corridor Freight and Managed Lane Project and will be part of a network of stations that will enable a faster roll out of zero-emission trucks in the Southern California region. This is in anticipation of a surge in demand in response to climate goals and the increase in opting for hydrogen fuel cell trucks that will utilize these stations. In addition to the SBCTA/TCEP contribution of \$5 million to the construction of the station, Caltrans is providing additional funds through a separate TCEP grant, authorized under the same CTC resolution. The SBCTA/TCEP contribution, plus the Nikola match, will enable a fueling capacity of up to 100 trucks per day, with an estimated 4000 kg of H₂/day. The PROJECT refers only to the portion of the fueling facility that will be funded from the SBCTA/TCEP contribution and not to the Caltrans portion. Caltrans is responsible for management of their portion of the overall fueling station construction effort in Victorville.

The following exhibits, which further describe and depict the PROJECT, are incorporated by reference and made a part of this CONTRACT:

Exhibit A, "Statement of Work (Project Components/Tasks)";

Exhibit B, " Project Location Map";

Exhibit C, " Project Budget";

Exhibit D, " Project Schedule";

Exhibit E, "Public Benefits"

ARTICLE 2. Funding, Construction, and Maintenance of the PROJECT

2.1 The total estimated cost to construct the PROJECT (exclusive of any costs for SBCTA to administer this PROJECT, as set forth in Section 5.8 below) is \$7,750,000 (Seven Million, Seven Hundred Fifty Thousand Dollars). The TCEP dollars will fund \$5,000,000 of the total cost, with CONTRACTOR funding \$2,250,000 of the total estimated cost of equipment procurement and construction, as reflected in Exhibit C, "Project Budget." In no case shall SBCTA's share of PROJECT costs exceed \$5,000,000.

CONTRACTOR and SBCTA shall work together in good faith to complete the PROJECT as contemplated in this CONTRACT and in accordance with the PROJECT Schedule as set forth in Exhibit D. CONTRACTOR and SBCTA shall establish periodic meetings and/or telephone calls for coordinating issues related to the construction of the PROJECT. Each Party shall designate a representative (or representatives) for such meetings and/or telephone calls and the representatives shall establish a schedule for joint meetings and bring such other individuals to such meetings as they deem appropriate to expedite the resolution of any issues that may arise. The purpose of these coordination meetings is, among other things, to work together to resolve issues and coordinate timelines and milestones in accordance with the then-current PROJECT schedule. SBCTA shall document all such PROJECT status meetings. The participants at such meetings shall have no authority to alter

the terms of this CONTRACT or the Parties' respective rights and obligations, which can only be affected by a written amendment executed by both Parties.

2.2 CONTRACTOR is responsible for construction engineering or arranging same, including, but not limited to, construction management, inspection, construction surveying, laboratory and field testing, preparation and processing of field reports, records, estimates, and final reports. All work and submittals shall be completed in accordance with the applicable standards of the State of California and the City of Victorville. Work submittals must contain the information required to comply with a state audit, associated with either the TCEP funding or other purpose. CONTRACTOR personnel shall be made available in support of any audit that occurs subsequent to completion of the PROJECT, at no additional charge to the PROJECT.

2.3 CONTRACTOR will be responsible, pursuant to this CONTRACT, to achieve the Public Benefits described in Exhibit E upon completion of the PROJECT as described in Exhibit A. These benefits shall not expire for any PROJECT component with the termination of this CONTRACT, but shall remain an obligation of CONTRACTOR for a minimum of five years following SBCTA's acceptance of the PROJECT. CONTRACTOR shall perform all necessary PROJECT maintenance during and subsequent to the completion of the PROJECT to ensure that the PROJECT continues to generate the Public Benefits, subject to and in accordance with the terms of the "Public Benefits" set forth in Exhibit E.

2.4 SBCTA shall designate a Project Manager to monitor the PROJECT and inspect the work performed by CONTRACTOR under this CONTRACT. CONTRACTOR shall also designate one or more Project Managers to coordinate CONTRACTOR's activities under this CONTRACT. Each Party shall notify the other in writing of their designated Project Manager(s) or of any change in their respective designated PROJECT Manager(s).

2.5 SBCTA's Project Manager and all SBCTA employees entering CONTRACTOR's property shall be accompanied by a CONTRACTOR representative and observe all applicable CONTRACTOR safety rules, regulations, and standards, including those requiring use of protective eyewear and clothing. CONTRACTOR shall provide a copy of applicable safety rules to SBCTA's Project Manager.

2.6 CONTRACTOR shall seek and receive all required permits and approvals necessary to perform PROJECT work, if any. The cost of permit applications either is included in the PROJECT cost or was paid for during PROJECT engineering. Permits and approvals are defined as all approvals legally required by any public agency that has jurisdictional authority or responsibility over regulating or permitting PROJECT work. The Parties shall jointly agree upon which permits are considered legally required for PROJECT. In the event that any public agency claims jurisdictional authority or responsibility over regulating or permitting PROJECT work and asserts a need to issue one or more unanticipated permits, the Parties shall work jointly to resolve the issuance of said permit.

2.7 SBCTA and CONTRACTOR have complied with the requirements of the California Environmental Quality Act (CEQA) as they apply to funding decisions for the PROJECT.

2.8 CONTRACTOR shall comply with all environmental laws applicable to CONTRACTOR's construction of the PROJECT.

2.9 CONTRACTOR agrees to insert in all contracts for work on the PROJECT clauses that

require that workers on the PROJECT be paid not less than the general prevailing wage rate as predetermined by the California Director of Industrial Relations to the extent required in California Labor Code Sections 1720-1815. SBCTA shall provide, prior to its Notice to Proceed, the applicable prevailing wage determinations for the PROJECT or a link to where such determinations may be found.

2.10 This CONTRACT is subject to any additional regulations, restrictions, limitations, conditions, or any statute enacted by the United States Government, the California Legislature or the California Treasurer that may affect the provisions, terms, or funding of this CONTRACT in any manner instituted prior to completion of the PROJECT.

ARTICLE 3. PROMPT PAYMENT/RETENTION

CONTRACTOR is required to pay all subcontractors for satisfactory performance of their work no later than seven (7) days from the date CONTRACTOR receives payment from SBCTA. SBCTA shall hold retainage from CONTRACTOR of five percent (5%) from its payments to CONTRACTOR and shall make prompt and regular incremental acceptances of portions, as determined by SBCTA, of the contract work and pay retainage to the CONTRACTOR based on these acceptances. The CONTRACTOR or subcontractor(s) shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work. Any delay or postponement of payment may take place only for good cause and with SBCTA's prior written approval. Any violation of these provisions shall subject CONTRACTOR to the penalties, sanctions, and other remedies specified in section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the CONTRACTOR or subcontractor in the event of: a dispute involving late payment or nonpayment by the CONTRACTOR; deficient subcontractor performance; and/or non-compliance by a subcontractor. This Article applies to DBE and non-DBE subcontractors.

ARTICLE 4. COMPENSATION

4.1 SBCTA agrees to provide funds and will pay reimbursable costs for the PROJECT based upon allowable costs described in this CONTRACT, to the extent applicable, to CONTRACTOR, not to exceed the total SBCTA Cost amount shown in Exhibit C (i.e., up to \$5,000,000 in TCEP funding; each invoice submitted by CONTRACTOR shall show that the minimum match of 30% has been expended along with the grant funds). Allowable costs for the PROJECT will include applicable sales and use taxes and additives including, for example, the cost of vehicles, machinery, tools, supervision, clerical, lodging and rents, and applicable payroll related costs. SBCTA reserves the right to hold the retainage after the TCEP billings reach \$3,000,000 (i.e., retain up to \$100,000) until the termination date of the CONTRACT as a form of guarantee that CONTRACTOR will operate and maintain the fueling facility for the required minimum five-year period following construction acceptance by SBCTA.

4.2 CONTRACTOR shall submit to SBCTA, monthly in arrears, an invoice that has been signed by CONTRACTOR's PROJECT Manager for actual funds expended for PROJECT work, with back-up documentation to support the amount invoiced. SBCTA shall remit payment of invoices to CONTRACTOR within forty-five (45) days of receipt. Allowable invoice amounts for PROJECT costs shall be determined pursuant to the provisions of Article 2. SBCTA may withhold payment of invoices until Caltrans has received the CTC allocation for the Caltrans portion of the TCEP contribution for the completion of the Caltrans portion of the hydrogen fueling site in Victorville as described in ARTICLE 1.

4.3 CONTRACTOR and its subcontractors shall establish and/or maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs. CONTRACTOR and its subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for payment of invoices.

4.4 It is expected that CONTRACTOR has performed appropriate risk management analysis and included appropriate contingencies in PROJECT estimate. Subject to the terms of this CONTRACT, CONTRACTOR will fund all PROJECT costs, including cost overruns in excess of the funds provided by SBCTA, as set forth in Section 2.1.

4.5 The Parties recognize that the actual cost of the PROJECT may vary from the amount obligated under this CONTRACT and intend that SBCTA's obligation hereunder is reasonable to cover such; provided, however, that SBCTA shall in no event be required to pay amounts in excess of the amount established in Article IV, Paragraph 4.1, and herein above.

4.6 Following completion of the PROJECT, CONTRACTOR shall determine the actual final allowable cost of the PROJECT and provide a final billing to SBCTA. CONTRACTOR shall be responsible for preparing a final PROJECT expenditure report and submitting it to SBCTA within one hundred eighty (180) days of PROJECT completion. The report shall identify the itemized costs incurred on the PROJECT and the sources of funds and shall itemize the 5% retention identified in Articles 3 and 4.1.

4.7 Intentionally omitted.

4.8 The Parties acknowledge and agree that SBCTA's costs associated with administering this CONTRACT are not included in the PROJECT Budget. Such costs for SBCTA to administer this CONTRACT will come from sources other than the PROJECT Budget.

ARTICLE 5. TAXES, DUTIES AND FEES

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

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SBCTA for the continuance of work performed by the CONTRACTOR, work directly or indirectly involved may be suspended or terminated by

SBCTA at the end of the period for which funds are available. When SBCTA becomes aware that any portion of work will or may be affected by a shortage of funds, it will promptly notify CONTRACTOR. Nothing herein shall relieve SBCTA from its obligation to compensate CONTRACTOR for work already performed pursuant to this Contract. No penalty shall accrue to SBCTA in the event this provision is exercised. This Contract is contingent on the California Transportation Commission's allocation of \$5 million in TCEP funding for the PROJECT. SBCTA will notify CONTRACTOR upon allocation and provide a copy of the CTC action to CONTRACTOR.

ARTICLE 7. PERMITS AND LICENSES

CONTRACTOR agrees that any subcontractors engaged to conduct the work under the Contract will hold valid licenses in the State of California for the type of work they are contracted to perform, and that the licenses are the correct class of license for said work. CONTRACTOR further agrees that subcontractors will maintain licenses through the entire duration of Contract without additional compensation from SBCTA. CONTRACTOR also agrees to keep current all permits required throughout the duration of the Project.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

CONTRACTOR shall provide SBCTA and its authorized representatives or agents access to CONTRACTOR's records which are directly related to this Contract for the purpose of inspection, auditing or copying. CONTRACTOR shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by SBCTA, except in the event of litigation or settlement of claims arising out of this Contract in which case CONTRACTOR agrees to maintain records through the conclusion of all such litigation, appeals or claims related to this Contract. CONTRACTOR further agrees to maintain separate records for costs of work performed by change order. CONTRACTOR shall allow SBCTA, its representatives and agents to reproduce any materials as reasonably necessary.

ARTICLE 9. SCHEDULE

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

ARTICLE 10. NONDISCRIMINATION/ EQUAL EMPLOYMENT OPPORTUNITY

10.1. During the performance of this Contract, CONTRACTOR and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran

status. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

10.2. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code Sections 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code Sections 11135-11139.5), and the regulations or standards adopted by CALTRANS to implement such article.

10.3. CONTRACTOR shall permit access by representatives of the Department of Fair Employment and Housing and SBCTA upon reasonable notice at any time during the normal business hours, but in no case, less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or SBCTA shall require to ascertain compliance with this clause.

10.4. CONTRACTOR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

10.5. CONTRACTOR shall include the nondiscrimination and compliance provisions of this clause in all agreements with its subcontractors and shall include a requirement in all agreements with all of same that each of them, in turn, include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts they enter into to perform work under this Contract.

ARTICLE 11. CONFLICT OF INTEREST

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

ARTICLE 12. REPRESENTATIONS

All work supplied by CONTRACTOR under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONTRACTOR agrees that the Work performed shall conform to the Statement of Work in Exhibit A, .

ARTICLE 13. PROPRIETARY RIGHTS/CONFIDENTIALITY

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

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

13.3 Except as reasonably necessary for the performance of Work, CONTRACTOR agrees that it, its employees, agents, and subcontractors will hold in confidence and not divulge to third parties, without prior written consent of SBCTA, any information obtained by CONTRACTOR from or through SBCTA in connection with CONTRACTOR's performance of this Contract, unless (a) the information was known to CONTRACTOR prior to obtaining same from SBCTA pursuant to a prior contract, or (b) the information was obtained at the time of disclosure to CONTRACTOR, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONTRACTOR or its employees, agents, or subcontractors, or (c) the information was obtained by CONTRACTOR from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to CONTRACTOR's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article which are produced by CONTRACTOR for SBCTA in the performance and completion of CONTRACTOR's Work under this Contract shall be kept confidential until released in writing by SBCTA, except to the extent such materials and information become a part of public domain information through no fault of CONTRACTOR, or its employees or agents.

13.4 CONTRACTOR shall not use SBCTA's name or photographs of the Project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA.

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

13.6 CONSULTANT, its employees, agents and subconsultants shall be required to comply with SBCTA's Confidentiality Policy; anyone who may have access to Personally Identifiable Information ("PII") and/or Sensitive Security Information ("SSI") will be required to execute a Confidentiality Agreement.

ARTICLE 14. TERMINATION

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

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

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

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

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

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

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

ARTICLE 15. STOP WORK ORDER

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

ARTICLE 16. CLAIMS

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

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 notice shall include a particular statement of the grounds of the dispute. If CONTRACTOR does not agree with the decision, then CONTRACTOR shall have ten (10) calendar days after

receipt of the decision in which to file a written appeal thereto with SBCTA's Executive Director. If the Executive Director fails to resolve the dispute in a manner acceptable to CONTRACTOR, then such dispute may be reviewed by a court of competent jurisdiction.

During resolution of the dispute, CONTRACTOR shall proceed with performance of this Contract with due diligence.

ARTICLE 17. INSURANCE

Prior to commencing the work for the PROJECT (WORK), at all times during the performance of the Work and for such additional periods as required herein, CONTRACTOR shall, at the CONTRACTOR's sole expense, procure and maintain insurance coverage with the following minimum requirements,:

1. Worker's Compensation/Employer's Liability. The policies must include the following:

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

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Work by CONTRACTOR or any subcontractor of any tier. All subcontractors of any tier performing any portion of the Work for CONTRACTOR shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONTRACTOR and all parties named as Indemnitees below. SBCTA and CONTRACTOR must be certificate holders and must be provided at least 30 days advance notice of cancellation, unless the cancellation is for non-payment, then at least 10 days advance notice of cancellation shall be provided. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

2. Commercial General Liability. The policy must include the following throughout the operations phase (entire contract period) \$2,000,000 per occurrence limit/\$2,000,000 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

- 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 subcontractors of

any tier performing any portion of the Work for CONTRACTOR 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

During the construction phase higher commercial general liability limits are required of all construction contractors as follows:

- \$5,000,000 per occurrence limit/\$5,000,000 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
- \$5,000,000 per occurrence limit for products/completed operations coverage. CONTRACTOR 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 subcontractors of any tier performing any portion of the Work for CONTRACTOR 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

3. **Umbrella/Excess CGL.** The CONTRACTOR’s policy must include the following:

- \$1,000,000 umbrella or excess liability.
- The umbrella or excess policy shall follow form over the CONTRACTOR’s primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
- The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
- The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

4. Commercial Auto. The policy must include the following:

- Auto Liability limits of not less than \$2,000,000 each accident
- Combined Bodily Injury and Property Damage Liability insurance
- Coverage must include owned autos (if any are owned), 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. CONTRACTOR 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 subcontractors of any tier performing any portion of the Work for CONTRACTOR shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with the exception of Auto Liability limits to be not less than \$1,000,000 each accident. The same waiver of subrogation in favor of all parties named as Additional Insureds below, and CONTRACTOR shall apply to all subcontractors of any tier performing any portion of the Work for CONTRACTOR.

General Provisions

1. Qualifications of Insurance Carriers. If policies are written by insurer carriers authorized and admitted to do business in the state of California, then the insurer carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-X or better, unless otherwise approved in writing by SBCTA's Risk Manager.
2. Additional Insurance Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, shall name San Bernardino County Transportation Authority, Southern California Logistics Airport, and their officers, directors, members, employees, agents and volunteers, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for any additional insured to vicarious liability, but shall allow coverage for all additional insureds to the full extent provided by the policy.
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; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, CONTRACTOR shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.

4. Deductibles and Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONTRACTOR shall be responsible for any deductible or self-insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONTRACTOR will pay, and shall require its subcontractors to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. At the option of SBCTA, if the deductible or SIR is greater than \$ 50,000 or five (5) percent of the amount of coverage required under this Contract, whichever is less, the CONTRACTOR shall guarantee that either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONTRACTOR or subcontractor, as applicable, shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONTRACTOR. The Contractor' s policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any Contractor's deductible or SIR.
5. CONTRACTOR's and Subcontractors' Insurance Primary. All policies required to be maintained by the CONTRACTOR or any subcontractor with the exception of Professional Liability and Worker's Compensation shall be endorsed 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 CONTRACTOR's or subcontractors' pollution, automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.
6. Waiver of Subrogation Rights. To the fullest extent permitted by law, CONTRACTOR hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other contractor, subcontractor or sub-subcontractor performing work or rendering services on behalf of SBCTA, in connection with the planning, development, and construction of the Project. To the fullest extent permitted by law, CONTRACTOR shall require similar written express waivers and insurance clauses from each of its subcontractors of every tier. CONTRACTOR shall require all of the policies and coverages required in this Article to waive all rights of subrogation against the Additional Insureds. Such insurance and coverages provided shall not prohibit CONTRACTOR from waiving the right of subrogation prior to a loss or claim.
7. Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, CONTRACTOR will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is canceled for nonpayment of premium, CONTRACTOR will provide SBCTA ten (10) days prior written notice. In any event, CONTRACTOR will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONTRACTOR receives within one business day after CONTRACTOR receives it by submitting it to SBCTA at insurance@gosbcta.com to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.

8. Enforcement. SBCTA may take any steps as are necessary to assure CONTRACTOR's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONTRACTOR fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONTRACTOR or withhold such expense from amounts owed CONTRACTOR, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONTRACTOR of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONTRACTOR, or any subcontractor of any tier of their obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract.
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.
10. Subcontractor Insurance. Insurance required of the CONTRACTOR shall be also provided by subcontractors or by CONTRACTOR on behalf of all subcontractors to cover their services performed under this Contract. CONTRACTOR may reduce the amounts of insurance limits provided by subcontractors to be proportionate to the amount of the subcontractor's contract and the level of liability exposure for the specific type of work performed by the subcontractor. CONTRACTOR shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors, with the exception of the following provision, which does not apply to subcontractors:
11. Higher limits. If the CONTRACTOR maintains higher limits than the minimums shown above, SBCTA shall be entitled to the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA. CONTRACTOR has the right to pay claims out of their own resources and not involve insurance if they so choose.
12. Special Risks or Circumstances. SBCTA reserves the right to reasonably 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. If the changes cause an increase in premium, SBCTA will pay the actual increase in premium. If the changes cause a decrease in premium, CONTRACTOR shall reimburse SBCTA the actual decrease in premium actually received by CONTRACTOR.

ARTICLE 18. INDEMNITY

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by SBCTA) and hold harmless Caltrans, Southern California Logistics Airport, San Bernardino County Transportation Authority, San Bernardino Council of Governments, and their officers, directors, members, employees, contractors, agents and volunteers (collectively the "Indemnitees") from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. To the extent permitted by law, CONTRACTOR's duties to defend and

indemnify shall apply regardless of the existence or degree of fault of any of the Indemnitees. The duty of CONTRACTOR and its insurers to provide a defense shall be immediate upon receipt of a written tender of defense from any of the Indemnitees, notwithstanding any subsequent allocation of defense costs that may be required by law. CONTRACTOR's indemnification obligation applies to the "passive" negligence of any of the Indemnitees, but does not apply to the "sole" or "active" negligence or "willful misconduct" of any of the Indemnitees within the meaning of Civil Code section 2782.

ARTICLE 19. OWNERSHIP OF DOCUMENTS

All reports developed by CONTRACTOR pursuant to this Contract shall become the property of SBCTA when prepared, whether delivered to SBCTA or not.

ARTICLE 20. RECORD AND INSPECTION AND AUDITING

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

ARTICLE 21. INDEPENDENT CONTRACTOR

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

ARTICLE 22. ATTORNEY'S FEES

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

ARTICLE 23. GOVERNING LAW AND VENUE

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

ARTICLE 24. FEDERAL, STATE AND LOCAL LAWS

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

ARTICLE 25. PRECEDENCE

In case of a discrepancy among the Contract Documents, the Contract articles shall prevail over any Exhibits.

ARTICLE 26. COMMUNICATIONS AND NOTICES

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

To: CONTRACTOR: NIKOLA CORPORATION	To: SBCTA
4141 East Broadway Road	1170 W. 3rd Street, 2nd Floor
Phoenix, AZ 85040	San Bernardino, CA 92410-1715
Attn: xxxxxxxx	Attn: (Steve Smith, P.E.)
Email: xxxxxxx	Email: (ssmith@gosbcta.com)
Phone: xxxxxxxx	Phone: (909) 884-8276

ARTICLE 27. MATERIALS

CONTRACTOR agrees to notify SBCTA if any PROJECT component, which shall include but not be limited to property, equipment, or infrastructure, is not used for the PROJECT up to the point of termination of the contract.

ARTICLE 28. ASSIGNMENT

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

ARTICLE 29. SUBCONTRACTS

Parties acknowledge that CONTRACTOR's participation in the project is primarily to deliver completed and operational fueling equipment and fuel supply for hydrogen fuel cell trucks that have the required technology consistent with requirements of the TCEP program. CONTRACTOR will provide to the PROJECT such equipment and provide to SBCTA copies of all customary warranties, etc., related to them under the terms of the TCEP grant program. As such, the CONTRACTOR's relationships with suppliers of components and subcomponents of the equipment and any related service providers involved in the manufacturing process are unique and different from a traditional subcontractor relationship for a project of this nature. Therefore, the Parties agree that the term "subcontractor" excludes any and all of CONTRACTOR's tier-1, tier-2 and tier-3 equipment component or subcomponent suppliers and any related service providers involved in the pre-sale manufacturing process, except to the extent necessary to assure compliance with the TCEP program or applicable State or Federal law or regulation. CONTRACTOR assumes responsibility for the products and work of all such suppliers and service providers, and for obtaining and providing any data, information or documents concerning their products or work needed for compliance with the TCEP program, and their products and work shall be included in the CONTRACTOR's own insurance, indemnity, defense and hold harmless obligations under this Contract.

ARTICLE 30. COORDINATION WITH OTHER CONTRACTS

Intentionally omitted.

ARTICLE 31. PREVAILING WAGE REQUIREMENTS

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

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

ARTICLE 32. SAFETY

32.1 In the performance of this Contract, CONTRACTOR shall comply with all applicable federal, State, and local laws governing safety, health, and sanitation. CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as SBCTA may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. It is a condition of this Contract, and shall be made a condition of each subcontract which the CONTRACTOR enters into pursuant to this Contract, that CONTRACTOR and any subcontractor shall not permit any employee, in performance of this Contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under California Occupational Safety and Health Act of 1973.

32.2 It is a condition of this Contract that the Director of Industrial Relations or authorized representative thereof shall have right of entry to any site of Contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under California Occupational Safety and Health Act of 1973.

ARTICLE 33. DISADVANTAGED BUSINESS ENTERPRISE

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

ARTICLE 34. NONSEGREGATED FACILITIES

34.1 CONTRACTOR, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. CONTRACTOR agrees that a breach of this certification is a violation of the EEO provisions of this Contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

34.2 As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time-clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g., disabled parking).

34.3 CONTRACTOR agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

ARTICLE 35. GRATUITIES

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

ARTICLE 36. CONFIDENTIALITY

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

ARTICLE 37. CONVICT LABOR

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

ARTICLE 38. INSPECTION OF SITE

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

ARTICLE 39. CLEAN WATER REQUIREMENTS

CONTRACTOR shall comply with all applicable standards, orders, or regulations issued pursuant to the Porter-Cologne Water Quality Control Act (California Water Code §§13000 et seq.) and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et. seq. CONTRACTOR shall report each violation to SBCTA and understands and agrees that SBCTA will in turn report each violation as required to assure notification to the Regional Water Quality Control Board. CONTRACTOR shall include this requirement in every subcontract.

ARTICLE 40. DRUG FREE WORKPLACE

CONTRACTOR agrees to comply with the Drug Free Workplace Act of 1990 per Government Code Section 8350 et seq, the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.; U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32; and U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.

ARTICLE 41. SEVERABILITY

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

ARTICLE 42. FORCE MAJEURE

CONTRACTOR shall not be in default under this Contract in the event that the Work performed by CONTRACTOR is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, natural disasters such as

floods, earthquakes, landslides and fires, or other catastrophic events which are beyond the reasonable control of CONTRACTOR and which CONTRACTOR could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the financial inability of the CONTRACTOR to perform or failure of the CONTRACTOR to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the CONTRACTOR.

ARTICLE 43. INCORPORATION OF RECITALS

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

ARTICLE 44. EFFECTIVE DATE

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

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

DRAFT

Attachment: SBCTA Contract 25-1003202 with NikolaForVictorvilleHydrogenStation (10872 : Contract No. 25-1003202 with Nikola Corporation

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

NIKOLA CORPORATION

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

By: _____
Chief Executive Officer

By: _____
Raymond W. Wolfe
Executive Director

Date: _____

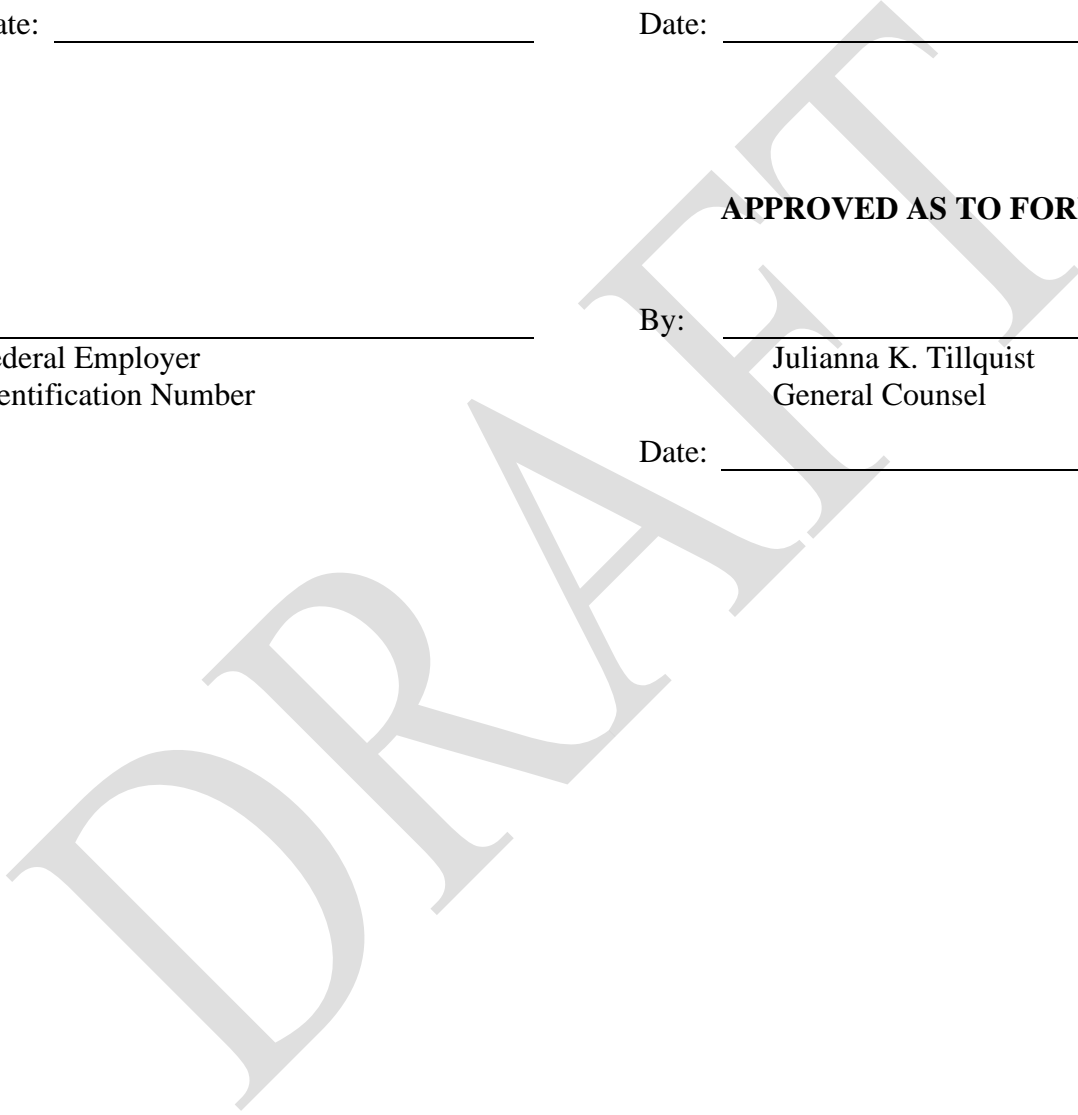
Date: _____

APPROVED AS TO FORM

Federal Employer
Identification Number

By: _____
Julianna K. Tillquist
General Counsel

Date: _____



Attachment: SBCTA Contract 25-1003202 with NikolaForVictorvilleHydrogenStation (10872 : Contract No. 25-1003202 with Nikola Corporation

Exhibit A

Statement of Work (Project Components/Tasks)

The PROJECT will construct a hydrogen fueling station in Victorville, California for trucks in the corridor. The site in Victorville is a shared site with Caltrans. Both SBCTA and Caltrans, in partnership with Nikola, submitted individual applications for Trade Corridor Enhancement Program (TCEP) funds to construct a hydrogen fueling station in the High Desert region of San Bernardino County. Both projects were awarded funds: the SBCTA US 395 Freight Mobility and Safety Project and the Caltrans Southern California Hydrogen Fueling Stations Project, which will construct multiple sites including the Victorville site. This report is specific to the SBCTA portion of the Victorville site, i.e., the ZE Component of the US 395 Freight Mobility and Safety Project.

The Victorville hydrogen fueling station will serve hydrogen Fuel-Cell Electric Vehicles (FCEV) traveling along US 395 and I-15 and will have the capacity to fuel up to 100 vehicles per day. This portion of the overall project will help jump-start the path to accelerating the turnover to zero-emission truck fleets through early investment in zero-emission fueling infrastructure for medium and heavy-duty trucks.

Table 1: Victorville HRS Project Summary

Item	Description
Project Limit/Footprint	District 8 – San Bernardino County – US-395 Project will construct a hydrogen fueling station in Victorville, CA at 13640 Phantom East.
Total Project Cost	\$7,250,000
Outputs	One hydrogen fueling station with capacity to fuel up to 100 vehicles per day 1 hydrogen refueling nozzle 4,000 kg H ₂ /day refueling capacity
Outcomes	Outcomes include improved movement of goods, development of zero emission infrastructure, and improved community health.
Environmental Determination or Document	CEQA: Notice of Exemption filed by the City of Victorville.

Exhibit B Project Location Map

Vicinity Map

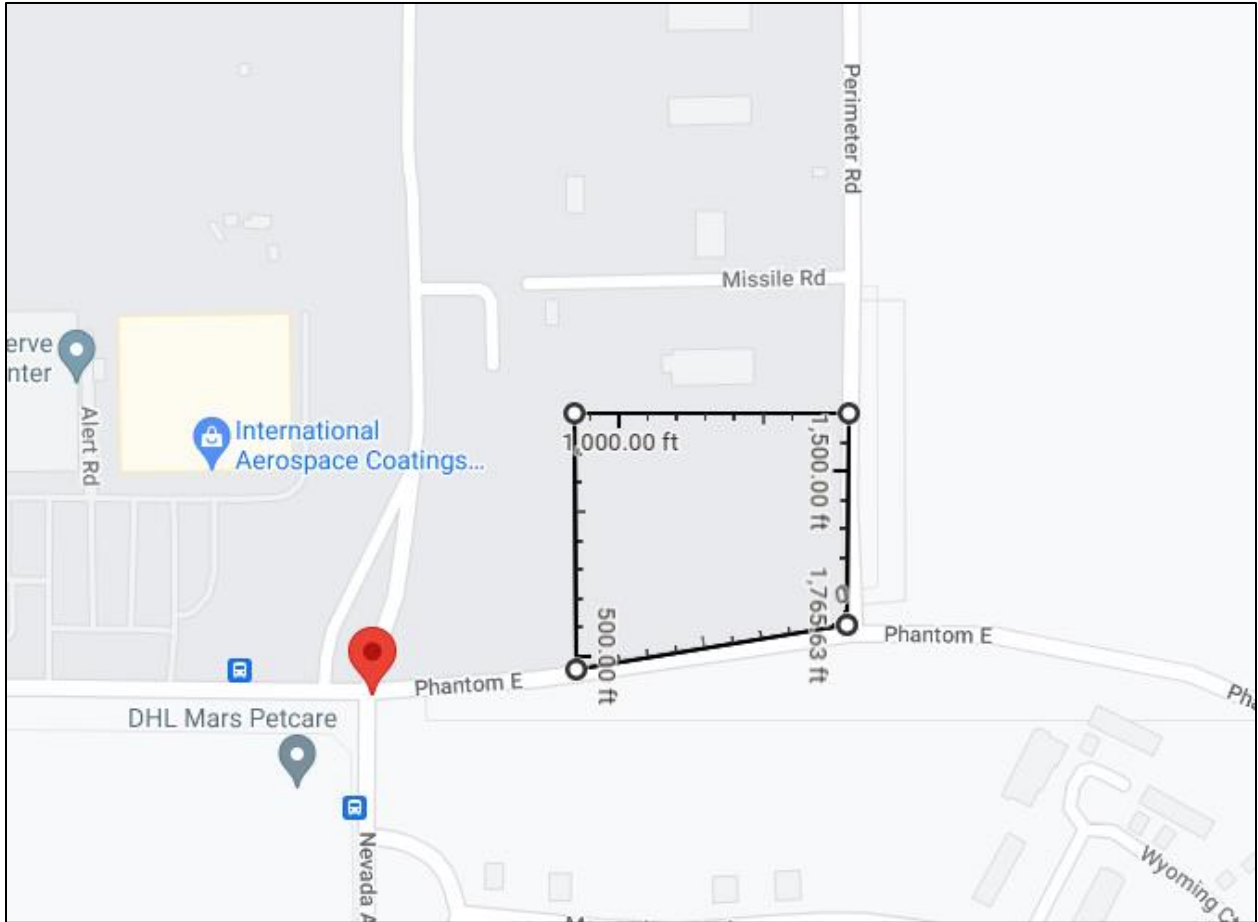


Exhibit C
PROJECT Budget

Nikola Private Funds	Fiscal Year Estimate								
	Prior	23/24	24/25	25/26	26/27	27/28	28/29	Future	Total
Component	In thousands of dollars (\$1,000)								
PA&ED Support									
PS&E Support									
Right-of-Way Support									
Construction Support									
Right-of-Way									
Construction		\$2,250							\$2,250
Total		\$2,250							\$2,250

SBCTA Funds TCEP Funds	Fiscal Year Estimate								
	Prior	23/24	24/25	25/26	26/27	27/28	28/29	Future	Total
Component	In thousands of dollars (\$1,000)								
PA&ED Support									
PS&E Support									
Right-of-Way Support									
Construction Support									
Right-of-Way									
Construction		\$5,000							\$5,000
Total		\$5,000							\$5,000

Estimate

See attached cost estimate for the Victorville hydrogen fueling station. Long lead equipment accounts for approximately 50% of the total project cost. This percentage varies depending on how many on- and off-site improvements are required. Given the site selected in Victorville is a greenfield site, the long lead equipment accounts for less of the project cost than it would at a brownfield site.

Exhibit D
Project Schedule

Project Milestones	Milestone Date (Month/Day/Year)	Milestone Designation (Target/Actual)
Project Study Report Approved	11/15/2022	Actual
Begin Environmental (PA&ED) Phase	9/11/2023	Actual
Circulate Draft Environmental Document – Document Type (ND/MND)/FONSI	12/28/2023	Actual
Draft Project Report	3/31/2024	Target
End Environmental Phase (PA&ED Milestone)	12/28/2023	Actual
Begin Design (PS&E) Phase	1/1/2024	Actual
End Design Phase (Ready to List for Advertisement Milestone)	4/1/2025	Target
Begin Right of Way Phase	1/1/2024	Actual
End Right of Way Phase (Right of Way Certification Milestone)	4/1/2025	Target
Begin Construction Phase (Contract Award Milestone)	9/6/2025	Target
End Construction Phase (Construction Contract Acceptance Milestone)	3/31/2026	Target
Begin Closeout Phase	4/30/2026	Target
End Closeout Phase (Closeout Report)	4/30/2027	Target

Exhibit E

Public Benefits

The Project's goals are to improve the movement of goods, community public health, and ZEV infrastructure to make progress toward a ZE goods movement economy.

Nikola's building and operating of heavy-duty hydrogen fueling stations will result in the movement of goods being zero emission as FCEVs become the preferred mode of transportation. This movement will improve public health in disadvantaged communities as the zero-emission infrastructure will provide enhanced safety benefits and provide cleaner air to disadvantaged neighborhoods that are in industrial areas.

Based on EPA provided averages for annual mileage and fuel economy, each zero tailpipe emissions FCEV should represent an annual GHG emission avoidance of approximately 106 metric tons of carbon dioxide (CO₂), 205 kilograms (kg) of nitrogen oxide (NO_x), and 4 kg of particulate matter (PM) 2.5. FCEVs of other OEMs should result in similar reductions of GHG emissions. This widespread use of FCEVs will also reduce noise which will contribute to overall enjoyment for residents within the community (i.e., 70 decibels (dB) compared to 100dB for diesel trucks). Also, construction of the Victorville fueling station will provide the local community access to high paying energy sector jobs created for the maintenance and operation of the site.

DRAFT

Minute Action

AGENDA ITEM: 3

Date: *September 13, 2024*

Subject:

US 395 Phase 2 Widening Project – Construction Management Services Contract Award

Recommendation:

That the Mountain/Desert Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Allocate \$500,000 in Measure I Victor Valley Major Local Highway Projects Program funds to the US 395 Phase 2 Widening Project to allow for constructability review prior to authorization of Federal funds for Construction Management Services.

B. Authorize the Executive Director, or his designee, to award and execute Contract No. 24-1003120 with WSP USA, Inc., to provide Construction Management Services for the US 395 Phase 2 Widening Project, in an amount not-to-exceed \$6,969,268.77, to be funded with Measure I Victor Valley Major Local Highway Projects Program funds and Federal Surface Transportation Block Grant Program funds, upon receipt of the Pre-Award Audit and subject to approval as to form by SBCTA General Counsel.

C. Authorize the Executive Director, or his designee, to approve a 10% contingency budget, to be released in accordance with SBCTA Contracting and Procurement Policy No. 11000, VIII.B.6.

Background:

US 395 is designated as a “Priority Interregional Highway” in the California Department of Transportation (Caltrans) 2021 Interregional Transportation Strategic Plan (ITSP). US 395 is widely recognized as a critical linkage for goods movement, supporting the economies of multiple inland counties and an important agricultural route to and from the Central Valley.

On July 6, 2022, the San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) awarded the professional services contract to initiate the Plans, Specifications, and Estimates (PS&E) phase of the US 395 Phase 2 Widening Project (Project).

On April 3, 2024, the Board authorized the release of Request for Proposals (RFP) No. 24-1003120, for procurement of Construction Management (CM) services. The RFP was released on April 9, 2024, and sent to 904 vendors registered on PlanetBids. The RFP was downloaded by 69 firms. On April 16, 2024, the pre-proposal meeting was held virtually and was attended by over 18 individuals representing various firms.

The Project is currently in the final design phase with a target for design approval in winter 2025. To allow for constructability reviews prior to completion of the PS&E package and prior to Federal authorization of the Project for construction, staff is recommending that \$500,000 in Measure I Victor Valley Major Local Highway Projects Program funds be allocated to the Project to fund these reviews. After Federal authorization to proceed with construction, the contract will be funded with Federal Surface Transportation Block Grant Program funds that were previously allocated to the Project by the Board.

On May 9, 2024, eight proposals were received from the following firms (in alphabetical order) by the date and time specified in the RFP. Staff reviewed each submittal and deemed each proposal responsive to the requirements outlined in the RFP.

Entity: San Bernardino County Transportation Authority

Mountain-Desert Committee Agenda Item

September 13, 2024

Page 2

1. ABA Global, Inc.
2. Anser Advisory Management LLC
3. Falcon Engineering Services, Inc.
4. Fountainhead Consulting Corporation
5. FCG Consultants Inc.
6. TRC Engineers, Inc.
7. HDR Construction Control Corporation
8. WSP USA, Inc.

The Evaluation Committee was comprised of three SBCTA staff members. Each committee member thoroughly reviewed each proposal and independently scored each firm based on the following evaluation criteria; Qualifications of the Firm – 30%, Proposed Staffing and Project Organization - 30%, and Work Plan - 40%. The Evaluation Committee members met on May 23, 2024 and ranked the firms based on total score. At the completion of discussions, five firms were invited to the interview. On June 25, 2024, the following firms were interviewed:

1. Anser Advisory Management LLC
2. Falcon Engineering Services, Inc.
3. FCG Consultants Inc.
4. HDR Construction Control Corporation
5. WSP USA, Inc.

After careful consideration, the Evaluation Committee ranked WSP USA, Inc. (WSP) as the best qualified firm for the Project and recommended CM Services Contract No. 24-1003120 to be awarded to WSP. WSP is considered the best qualified firm for the Project as they were able to successfully demonstrate a thorough understanding of the scope of work and proposed a qualified team, clear concise work plan, and showing the ability to perform all work and services necessary to complete the Project.

Following the Evaluation Committee's recommendation for selection, staff negotiated the final cost with the consultant. Staff is recommending that the Board, authorize the Executive Director, or his designee, to award and execute CM Services Contract No. 24-1003120, for a total not-to-exceed amount of \$6,969,268.77, upon receipt of the Pre-Award Audit and subject to approval as to form by SBCTA General Counsel. As part of the procurement process for architectural and engineering services, the contract is subject to a pre-award audit which may change the not-to-exceed amount slightly.

Staff is also recommending that the Board, authorize the Executive Director, or his designee, to approve a 10% contingency budget, to be released in accordance with SBCTA Contracting and Procurement Policy No. 11000, VIII.B.6.

Financial Impact:

This Project is included in the adopted budget for Fiscal Year 2024/2025 and funded with Measure I Victor Valley Major Local Highway Program funds and Federal Surface Transportation Block Grant Program funds in Program 40, Project Delivery.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel, Procurement Manager, and Enterprise Risk Manager have reviewed this item and the draft contract.

Responsible Staff:

David Tan, Senior Project Manager

San Bernardino County Transportation Authority

Approved
Mountain-Desert Committee
Date: September 13, 2024
Witnessed By:

General Contract Information

Contract No: 24-1003120 Amendment No.: _____
 Contract Class: Payable Department: Project Delivery
 Vendor No.: 01610 Vendor Name: WSP USA, Inc.
 Description: US 395 Phase 2 Construction Management Services

List Any Related Contract Nos.: _____

Dollar Amount					
Original Contract	\$	6,969,268.77	Original Contingency	\$	696,926.88
Prior Amendments	\$	-	Prior Amendments	\$	-
Prior Contingency Released	\$	-	Prior Contingency Released (-)	\$	-
Current Amendment	\$	-	Current Amendment	\$	-
Total/Revised Contract Value	\$	6,969,268.77	Total Contingency Value	\$	696,926.88
Total Dollar Authority (Contract Value and Contingency)				\$	7,666,195.65

Contract Authorization

Board of Directors Date: 10/2/2024 Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Other Contracts _____ Sole Source? No No Budget Adjustment _____
 Federal/Local _____ Construction Management _____ N/A _____

Accounts Payable

Estimated Start Date: 10/14/2024 Expiration Date: 9/30/2029 Revised Expiration Date: _____
 NHS: N/A QMP/QAP: Yes Prevailing Wage: Yes

							Total Contract Funding:		Total Contingency:	
Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	\$	\$	
GL	2010	40	0820	0844	52005	42101006	640	STP	6,469,268.77	696,926.88
GL	4110	40	0820	0844	52005	41100000	640	MSI VV MLHP	500,000.00	-
GL								-	-	-
GL								-	-	-
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GL								-	-	-

David Tan _____ Kristi Lynn Harris _____
 Project Manager (Print Name) Task Manager (Print Name)

Additional Notes: MSI to be used 100% until CON E76 approved, then STP 100%. Amounts per source are estimates.

Attachment: CSS - 24-1003120 (10713 : US 395 Phase 2 Widening Project - Construction Management Services Contract Award)

CONTRACT NO. 24-1003120**BY AND BETWEEN****SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY****AND****WSP USA, INC.****FOR****CONSTRUCTION MANAGEMENT SERVICES FOR US395 PHASE 2 WIDENING PROJECT**

This contract (referred to as “Contract” or “Agreement”), is made and entered into by and between the San Bernardino County Transportation Authority (“SBCTA” or “LOCAL AGENCY”) whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and WSP USA, Inc. (“CONSULTANT”) whose address is 862 E. Hospitality Lane, Suite 350, San Bernardino, CA 92408. SBCTA and CONSULTANT are each a “Party” and collectively the “Parties”.

RECITALS:

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

WHEREAS, CONSULTANT has confirmed that CONSULTANT has the requisite professional qualifications, personnel and experience and is fully capable and qualified to perform the work 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 I. INTRODUCTION

- A. The work to be performed under this Contract is set forth in Exhibit A “Scope of Work” and Exhibit B “CONSULTANT’s Approved Cost Proposal” (“Cost Proposal”) dated August 5, 2024 (collectively the “Work” or “Services”).
- B. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of SBCTA.
- C. Without the written consent of SBCTA, this Contract is not assignable by CONSULTANT either in whole or in part. SBCTA may assign its rights and obligations under this Contract in whole or in part to any related or successor agency. However, claims for money due or which become due to CONSULTANT from LOCAL AGENCY under this Contract may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.

- D. No alteration or variations of the terms of this Contract shall be valid, unless made in writing and signed by the Parties; and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties.
- E. The consideration to be paid to CONSULTANT as provided in this Contract shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.
- F. SBCTA's Project Manager for this Contract is David Tan. The Notice to Proceed will be issued by SBCTA's Procurement Analyst.

ARTICLE II. PROJECT DESCRIPTION/SCOPE OF WORK

CONSULTANT agrees to perform the 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. The Work performed under this Contract shall be completed to the satisfaction of SBCTA, with its satisfaction being based on prevailing applicable professional standards. Scope of Work is sometimes referred to as Statement of Work in this Contract. The Scope of Work is more fully described in Exhibit A.

ARTICLE III. CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports to SBCTA at least once a month. The report should be sufficiently detailed for Contract Administrator to determine if CONSULTANT is performing to expectations and is on schedule, to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered so remedies can be developed.
- B. CONSULTANT's project manager shall meet with SBCTA's Contract Administrator, as needed, to discuss progress on the Contract.

ARTICLE IV. PERFORMANCE PERIOD

- A. This Contract shall go into effect on **October 2, 2024**, contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Procurement Analyst. The Contract shall end on **September 30, 2029**, unless extended by contract amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on LOCAL AGENCY until the Contract is fully executed and approved by LOCAL AGENCY.

ARTICLE V. ALLOWABLE COSTS AND PAYMENTS

- A. The method of payment for this Contract will be based on actual cost plus a fixed fee. LOCAL AGENCY 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, Exhibit B, unless additional reimbursement is provided for by contract amendment. In no event will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY's approved overhead rate set forth in the Cost Proposal, Exhibit B. In the event that LOCAL AGENCY 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 LOCAL AGENCY shall be adjusted by contract amendment to accommodate the changed Work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by contract amendment.
- B. The indirect cost rate established for this Contract is extended through the duration of this specific Contract.
- C. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$276,619.26. 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.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- E. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- F. Progress payments will be made monthly in arrears based on services provided 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, LOCAL AGENCY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.
- G. No payment will be made prior to approval of any Work, nor for any Work performed prior to approval of this Contract.
- H. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices. Invoices shall be submitted no later than 45 calendar days after the performance of Work for which CONSULTANT is billing except for the month of June, which will require the invoice to be submitted by July 10th. 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 and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY including any equipment purchased under the provisions of Article XI Equipment Purchase of this Contract. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be emailed to LOCAL AGENCY's Contract Administrator at: ap@gosbeta.com

For large files over 30 megabytes, invoices can be submitted using this link:

<https://sanbag-lfweb.sanbag.ca.gov/Forms/Invoice-submission>

I. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed \$6,969,268.77.

J. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by LOCAL AGENCY's Contract Administrator.

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.

K. All subcontracts in excess of \$25,000 shall contain the provisions of this Article.

ARTICLE VI. TERMINATION

A. LOCAL AGENCY reserves the right to terminate this Contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.

B. LOCAL AGENCY may temporarily suspend this Contract, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this Contract. A temporary suspension may be issued concurrent with the notice of termination.

C. LOCAL AGENCY may terminate this Contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, LOCAL AGENCY may proceed with the Work in manner deemed proper by LOCAL AGENCY. If LOCAL AGENCY terminates this Contract with CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due to CONSULTANT under this Contract prior to termination, unless the cost of completion to LOCAL AGENCY exceeds the funds remaining in the Contract, in which case the overage shall be deducted from any sum due CONSULTANT under this Contract and the balance, if any, shall be paid to CONSULTANT upon demand.

ARTICLE VII. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR Part 31, shall be used to determine the cost allow ability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 or 48 CFR Part 31, are subject to repayment by CONSULTANT to LOCAL AGENCY.

ARTICLE VIII. RETENTION OF RECORDS/AUDIT

- A. For the purpose of determining compliance with Government Code 8546.7, CONSULTANT, subconsultants, and LOCAL AGENCY shall maintain and make available for inspection all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate work papers, and other evidence pertaining to the performance of the Contract, including but not limited to, the costs, of administering the Contract. All parties, including the CONSULTANT's Independent CPA, shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the Contract. The state, State Auditor, LOCAL AGENCY, Federal Highway Administration (FHWA), or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants' (CPA) work papers that are pertinent to the Contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

ARTICLE IX. AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this Contract that is not disposed of by agreement shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this Contract.
- D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the

Contract, Cost Proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The Contract, Cost Proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the Contract by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments (including LOCAL AGENCY) have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the Contract and disallowance of prior reimbursed costs.

- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review by Caltrans' Independent Office of Audits and Investigation (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the Contract terms and cause for termination of the Contract and disallowance of prior reimbursed costs.
1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely matter. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR compliant ICR (e.g., 48 CFR, part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials Audit Guide; and other applicable procedures and guidelines) is received and approved by IOAI. Accepted rates will be as follows:
 - a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
3. If the CONSULTANT fails to comply with the provisions of this Section E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1., above, for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Contract.
4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA-audited ICR; (2) all work under this Contract has been completed to the satisfaction of LOCAL AGENCY; and (3) IOAI has issued its final ICR review letter. The CONSULTANT must submit its final invoice to LOCAL AGENCY no later than 60 days after occurrence of the last of these items. The accepted ICR will apply to this Contract and all other contracts executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X. SUBCONTRACTING

- A. Nothing contained in this Contract or otherwise shall create any contractual relation between LOCAL AGENCY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from LOCAL AGENCY'S obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the Work contemplated with resources available within its own organization and no portion of the Work pertinent to this Contract shall be subcontracted without written authorization by LOCAL AGENCY's Contract Administrator, except that which is expressly identified in the approval Cost Proposal.
- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by LOCAL AGENCY.
- D. All subcontracts entered into as a result of this Contract shall contain all the provisions stipulated in this Contract to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by LOCAL AGENCY's Contract Administrator prior to the start of work by the subconsultant(s).

- F. **Prompt Progress Payment:**
 CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than one hundred fifty percent (150) of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

ARTICLE XI. EQUIPMENT PURCHASE

- A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this Contract is subject to the following:
- a. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the Contract, or if the Contract is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment; the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
 - b. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

ARTICLE XII. STATE PREVAILING WAGE RATES

- A. CONSULTANT and Subconsultants must register with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this Contract, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages in accordance with the General Prevailing Wage Rate Determinations available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>), as well as the Department of Industrial Relations website at <http://www.dir.ca.gov>. These wage rates are made a specific part of this Contract by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. CONSULTANT shall ensure that it and each of its subconsultants keep accurate certified payroll records in accordance with Labor Code §1776 and 8 CCR §16000.
- D. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements.
- E. Eight (8) hours labor constitutes a legal day's work. Time of service of any worker employed by CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work is restricted or limited to no more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815. Any violation of this provision shall subject CONSULTANT to penalties as specified in Labor Code §1813.
- F. Employment of Apprentices.
- a. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
 - b. CONSULTANT and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII. CONFLICT OF INTEREST

- A. CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this Contract, or any ensuing LOCAL AGENCY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Contract, or any ensuing LOCAL AGENCY construction project, which will follow.
- B. 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.
- C. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT, will bid on any construction contract, or on 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.
- D. 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 on any contract to provide construction inspection for any construction project resulting from this Contract.
- E. CONSULTANT is obligated to fully disclose to SBCTA, in writing, any conflict of interest issues as soon as they are known to CONSULTANT. CONSULTANT and its staff shall comply with SBCTA's Conflict of Interest Code.

ARTICLE XIV. 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 LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY 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 XV. PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
 - 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 any local, State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or an 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, 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. 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. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
 - C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed one hundred thousand dollars (\$100,000) and that all such sub-recipients shall certify and disclose accordingly.

ARTICLE XVI. NON-DISCRIMINATION AND STATEMENT OF COMPLIANCE

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and 2 CCR § 8103.
- B. During the performance of this Contract, Consultant and its subconsultants shall not deny the Contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation or military or veteran status. Consultant and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (2 CC R § 110005 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in 2 CCR §§ 8100-8504, are incorporated into this Contract by reference and made a part hereof as if set forth in full.
- D. Consultant shall permit access by representatives of the Department of Fair Employment and Housing Act and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information in its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.

- E. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. The Consultant shall comply with regulations relative to Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq. Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, or disability, be excluded from participation in, denied the benefits of or subjected to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- G. The CONSULTANT, with regard to the work performed by it during the Agreement, shall act in accordance with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 – Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the Consultant shall not participate directly or indirectly in the discrimination prohibited by 49 CFR § 21.5, including employment practices and the selection and retention of Subconsultants.
- H. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

ARTICLE XVII. DEBARMENT AND SUSPENSION CERTIFICATION

- A. CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to LOCAL AGENCY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

- C. Exceptions to the Federal Government excluded parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by the FHWA.

ARTICLE XVIII. FUNDING REQUIREMENTS

- A. It is mutually understood between the Parties that this Contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both Parties, in order to avoid program or fiscal delays that would occur if the Contract were executed after that determination was made.
- B. This Contract is valid and enforceable only if sufficient funds are made available to SBCTA for the purpose of this Contract. In addition, this Contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by Congress, State Legislature, or SBCTA governing board that may affect the provisions, terms, or funding of this Contract in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this Contract may be amended to reflect any reduction in funds.
- D. SBCTA has the option to terminate the Contract under the 30-day cancellation clause or by mutual agreement, or to amend the Contract to reflect any reduction of funds.

ARTICLE XIX. CHANGE IN TERMS

- A. This Contract may be amended or modified only by mutual written agreement of the Parties.
- B. CONSULTANT shall only commence Work covered by an amendment after the amendment is executed and the NTP has been provided by SBCTA's Procurement Analyst.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the CONSULTANT's Approved Cost Proposal, without prior written approval of SBCTA.

ARTICLE XX. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. CONSULTANTS must give consideration to DBE firms as specified in 49 CFR, Part 26. If the Contract has a DBE goal, CONSULTANT must meet the DBE goal by using DBEs as subconsultants or documenting a good faith effort to have met the goal. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace the subconsultant with another DBE subconsultant if the goal is not otherwise met. A DBE may be terminated only with written approval by SBCTA and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting SBCTA's consent for the proposed termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).

- B. SBCTA, as a recipient of federal financial assistance, is required to implement a Disadvantaged Business Program in accordance with federal regulations at 49 CFR Part 26 issued by the U.S. Department of Transportation (DOT). The contract specific goal for this project pursuant to the CONSULTANT's Approved Cost Proposal is **22 %**. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit 10-O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT must furnish all documentation satisfactory to SBCTA that the work committed to DBEs was actually performed by DBEs. Requests for progress payments must include a summary of payments (Caltrans Form Exhibit 9-F) actually made to DBEs during the invoice period, which includes a total of all payments made to all subconsultants under this Contract. DBE participation shall be credited toward the overall DBE goal only when payments are actually made to the DBE firms. CONSULTANT shall submit on the Exhibit 9-F form per the Caltrans Exhibit 9-F Instructions. Upon completion of the Contract, CONSULTANT shall submit "Final Report-Utilization of Disadvantaged Business Enterprises--First Tier Subconsultants" Form 17-F with the final invoice. Failure to submit the required reports shall result in SBCTA imposing a penalty of \$100 per day, per report.
- D. CONSULTANT shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by CONSULTANT to carry out these requirements is a material breach of this Contract, which may result in SBCTA exercising the right to impose administrative remedies, which shall include, but shall not be limited to the following: withholding of payment due to CONSULTANT equivalent to the difference between the actual DBE attainment and the Contract DBE goal; suspension of payment to CONSULTANT of any other monies held by SBCTA; and termination of the Contract, in whole or in part. The administrative remedies shall not apply if the CONSULTANT is able to demonstrate, to the satisfaction of SBCTA, that it exercised Good Faith Efforts in an attempt to meet the Contract DBE goal.
- E. SBCTA will bring to the attention of the DOT Operating Administration, in writing, any false, fraudulent, or dishonest conduct in connection with SBCTA's administration of Caltrans' DBE program, to enable the DOT Operating Administration to take the necessary and appropriate steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, or action under suspension and debarment or Program Fraud and Civil Penalties rules) as provided in Title 49 CFR, Part 26, Section 26.109. SBCTA also will consider similar action under its own legal authorities, including, but not limited to, responsibility determinations in future contracts.
- F. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this Article.

ARTICLE XXI. 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 annul 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 XXII. DISPUTES

Prior to either party commencing any legal action under this Contract, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after a reasonable period of time of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this Contract that is not disposed of by agreement shall be decided by a committee consisting of SBCTA's Procurement Analyst and SBCTA's Program Manager who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by SBCTA's Executive Director of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by SBCTA's Executive Director excuses CONSULTANT from full and timely performance in accordance with the terms of this Contract.

ARTICLE XXIII. INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit SBCTA, the State, and the FHWA if federal participating funds are used in this Contract, to review and inspect the project activities and files at all reasonable times during the performance period of this Contract, including review and inspection on a daily basis.

ARTICLE XXIV. SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by SBCTA and SBCTA representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while at the construction project site.

- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, SBCTA has determined that such areas are within the limits of the Project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this Contract, shall contain all of the provisions of this Article.

ARTICLE XXV. INSURANCE

- A. CONSULTANT shall furnish SBCTA with original Certificates of Insurance, including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page(s) of the CGL policy listing all policy endorsements, before work begins. SBCTA reserves the right to require full-certified copies of all Insurance coverages and endorsements. Prior to commencing the Work, at all times during the performance of the Work, and for such additional periods as required herein, 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 portion of the Work to procure and maintain such insurance as specified below:

1. Professional Liability. The policies must include the following:

- \$3,000,000 per claim limits
- \$9,000,000 in the aggregate for all claims.
 - Coverage shall be appropriate for the CONSULTANT'S profession and provided services to include coverage for errors and omissions arising out of the CONSULTANT'S professional services, or services of any person employed by the CONSULTANT, or any person for whose acts, errors, mistakes or omissions the CONSULTANT may be legally liable.
- If Coverage is on a claims made basis:
 - Policy shall contain a retroactive date for coverage of prior acts, which date will be prior to the date the CONSULTANT begins to perform Work under this Contract.
 - CONSULTANT shall secure and maintain "tail" coverage for a minimum of five (5) years after Contract completion.

2. Worker's Compensation/Employer's Liability. 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 (ISO form WC 00 03 13, or equivalent) 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.

3. Commercial General Liability. The policy must include the following:

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

- \$7,000,000 per occurrence limit/\$7,000,000 in the aggregate for property damage or bodily injury
- \$2,000,000 per occurrence limit/\$2,000,000 in the aggregate for personal injury and advertising injury
- \$7,000,000 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."
- Shall have no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract
- Have no exclusion for professional services except the latest ISO form CG 22 79 or CG 22 80 or both; and include products and completed operations liability coverage for a period of not less than 5 years following the Expiry Date.
- All sub-consultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the CGL insurance coverage with limits not less than:
 - Each occurrence limit: \$1,000,000
 - General aggregate limit: \$2,000,000

- Personal injury and advertising limit \$1,000,000
- Products-completed operations aggregate limit \$2,000,000
- All sub-consultants' and all subs of any tier deductibles or self-insured retentions must be acceptable to SBCTA's Risk Manager.

4. Umbrella/Excess CGL. The policy must include the following:

- If the CONSULTANT elects to include an umbrella or excess policy to cover any of the total limits required beyond the primary commercial general liability policy limits and/or the primary commercial automobile liability policy limits, then the policy must include the following:
 - The umbrella or excess policy shall follow form over the 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.
 - The umbrella or excess policy must also extend coverage over the automobile policy if it is to be used in combination with the primary automobile policy to meet the total insurance requirement limits.

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

5. Commercial Auto. 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.

6. Cyber Liability/Technology Professional Liability Errors and Omissions Insurance – Coverage shall be appropriate to the Consultant's profession and work hereunder, with limits not less than \$2,000,000 per occurrence.

- Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Consultant in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security.
- The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
- The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of SBCTA in the care, custody, or control of the CONSULTANT. If not covered under the CONSULTANT’s liability policy, such “property” coverage of SBCTA may be endorsed onto the CONSULTANT’s Cyber Liability Policy as covered property as follows:
 - Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of SBCTA that will be in the care, custody, or control of CONSULTANT.

7. Pollution Liability. Intentionally Omitted

B. General Provisions

1. Qualifications of Insurance Carriers. Qualifications of Insurance Carriers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-:X or better, unless otherwise approved in writing by SBCTA’s Risk Manager.
2. Additional Insured Coverage. All policies, except those for Workers’ Compensation, Cyber Liability and Professional Liability insurance, shall name San Bernardino County Transportation Authority (SBCTA), Caltrans, City of Victorville and City of Hesperia, and their officers, directors, members, employees, and agents, as additional insureds (“Additional Insureds”). The Indemnified Parties shall be named, by specific endorsement, as additional insureds using ISO form CG 20 10 10 01 and ISO form CG 20 37 10 01 , or their respective equivalent forms, to include completed operations coverage. 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 any additional insured to vicarious liability, but shall allow coverage for all additional insureds to the full extent provided by the policy.
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.
4. Deductibles or Self-Insured Retention -. Regardless of the allowance of exclusions or deductibles by SBCTA, CONSULTANT shall be responsible for any deductible or self-insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONSULTANT will pay, and shall require its sub-consultants to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. At the option of SBCTA, if the deductible or SIR is greater than \$10,000 or one (1) percent of the amount of coverage required under this Contract, whichever is less, the CONSULTANT shall guarantee that either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONSULTANT shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONSULTANT. The CONSULTANT's policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any CONSULTANT's deductible or SIR.
 5. CONSULTANT's and Subconsultants' Insurance 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.
 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.

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 insurance@gosbcta.com to the attention of SBCTA's Risk Manager, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.
8. Non-Limitation of Insurance Requirements - The insurance coverage provided and limits required under this Contract are minimum requirements and are not intended to limit the CONSULTANT's indemnification obligations under the Contract, nor do the indemnity obligations limit the rights of the Indemnified Parties to the coverage afforded by their insured status. To the extent required by Law in connection with Work to be performed, the CONSULTANT shall obtain and maintain, or cause to be obtained and maintained, in addition to the insurance coverage expressly required under this Contract, such other insurance policies for such amounts, for such periods of time and subject to such terms, as required by Law and any other agreements with which the CONSULTANT is required to comply, including any Third-Party Agreements. Liability insurance coverage will not be limited to the specific location designated as the Site, except that if the CONSULTANT arranges project-specific general liability, excess liability, or workers' compensation coverage, limitations of coverage to the Site will be permitted subject to SBCTA approval and use of the broadest available site-specific endorsements. No liability policy will contain any provision or definition that would serve to eliminate so-called "third-party-over action" claims, including any exclusion for bodily injury to an employee of the insured or of any Subcontractor. The CONSULTANT acknowledges and will at all times comply with the provisions of Labor Code Section 3700, which require every employer in the State to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of that code.
9. 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 obligations 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.

10. 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.
11. Project Specific Insurance. All insurance coverage required to be provided by CONSULTANT, with the exception of automobile liability and worker's compensation, shall apply specifically and exclusively for the Project and extend to all aspects of the Work, with coverage limits dedicated solely to the Project. Use of other insurance programs is acceptable, provided that coverage under such programs provides dedicated Project-specific limits and identified premiums and meets all requirements described in contract.
12. No Representations or Warranties. SBCTA makes no representation or warranty that the coverage, limits of liability, or other terms specified for the insurance policies required under this contract are adequate to protect the CONSULTANT against its undertakings under this Contract or its liability to any third party, nor will they preclude SBCTA from taking any actions as are available to it under this Contract or otherwise at law.
13. Review of Coverage. SBCTA may at any time review the coverage, form, and amount of insurance required under this contract, and may require the CONSULTANT to make changes in such insurance reasonably sufficient in coverage, form, and amount to provide adequate protection against the kind and extent of risk that exists at that time. SBCTA may change the insurance coverages and limits required under this contract by notice to the CONSULTANT, whereupon the CONSULTANT will, within sixty (60) days of such notice date, procure the additional and/or modified insurance coverages. Upon such change any additional cost (at actual cost) from such change will be paid by SBCTA and any reduction in cost will reduce the Contract Price pursuant to a Contract amendment.
14. Subconsultant Insurance. Insurance required of the CONSULTANT shall be also provided by subconsultants or by CONSULTANT on behalf of all subconsultants 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 subconsultant'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.
15. 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.
16. Special Risks or Circumstances. SBCTA reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

ARTICLE XXVI. INDEMNITY

- A. 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 Authority, Caltrans, City of Victorville and City of Hesperia, and their respective directors, officers, employees, agents and volunteers ("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 to the maximum extent permitted by Civil Code Section 2782.8.

- B. For all other Work and obligations under this Contract, CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SBCTA) and hold harmless 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 Indemnitees 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 an Indemnitee's "active" as well as "passive" negligence but does not apply to an Indemnitee's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

ARTICLE XXVII. OWNERSHIP OF DATA

- A. Upon completion of all Work under this Contract, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Contract will automatically be vested in SBCTA, and no further agreement will be necessary to transfer ownership to SBCTA. CONSULTANT shall furnish SBCTA all necessary copies as needed to complete the review and approval process.
- B. Additionally, it is agreed that the Parties intend this to be a Contract for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of SBCTA without restriction or limitation upon its use or dissemination by SBCTA.
- C. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the Project for which this Contract has been entered into.
- D. CONSULTANT is not liable for claims, liabilities, or losses arising out of or connected with the modification or misuse by SBCTA of the machine-readable information and data provided by CONSULTANT under this Contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of or connected with any use by SBCTA of the project documentation on other projects or additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by CONSULTANT.

- E. Applicable patent rights provisions regarding rights to inventions shall be included in the Contract as appropriate (48 CFR 27, Subpart 27.3, Patent Rights under Government Contracts for federal-aid contracts).
- F. SBCTA may permit copyrighting reports or other agreement products. If copyrights are permitted, the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.
- G. Any subcontract in excess of \$25,000 entered into as a result of this Contract, shall contain all of the provisions of this Article.

ARTICLE XXVIII. CLAIMS FILED BY SBCTA'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by SBCTA's construction contractor relating to Work performed by CONSULTANT's personnel and additional information or assistance from 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 and legal staff, and for testimony, if necessary, at depositions, administrative proceedings, trial or arbitration proceedings.
- B. 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 services under this Contract.
- C. Services of 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 resolve the construction claims.
- D. Any subcontract in excess of \$25,000 entered into as a result of this Contract, shall contain all of the provisions of this Article.

ARTICLE XXIX. CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to SBCTA's operations which are designated confidential by SBCTA and made available to CONSULTANT in order to carry out this Contract shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion or at a public hearing held by SBCTA relating to the Contract shall not authorize CONSULTANT to further disclose such information or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media, including social media, regarding the Contract or SBCTA's actions on the same, except to SBCTA's staff, CONSULTANT's own personnel involved in the performance of this Contract, at public hearings or in response to questions from a SBCTA Board Committee or other public meeting approved by SBCTA.

- D. CONSULTANT shall not issue any news release or public relations item of any nature whatsoever regarding Work performed or to be performed under this Contract without prior review of the contents thereof by SBCTA and receipt of SBCTA's written permission.
- E. 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 or except by court order. 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 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. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, SBCTA has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, SBCTA's attorney's fees and disbursements, including without limitation experts' fees and disbursements.
- F. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this Article.
- G. CONSULTANT, its employees, agents and subconsultants shall be required to comply with SBCTA's Confidentiality Policy; anyone who may have access to Personally Identifiable Information ("PII") and/or Sensitive Security Information ("SSI") will be required to execute a Confidentiality Agreement.

ARTICLE XXX. 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, because of CONSULTANT's failure to comply with an order of a federal court that ordered CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXXI. EVALUATION OF CONSULTANT

CONSULTANT's performance may be evaluated by SBCTA. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the Contract file. This information may be used when evaluating the firm on future proposal submittals.

ARTICLE XXXII. RETENTION OF FUNDS

- A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this Article.

B. Retention.

1. As partial security against CONSULTANT's failure to perform under this CONTRACT, SBCTA shall withhold a retention of ten percent (10%) of the total amount of each invoice from CONSULTANT up to \$250,000. CONSULTANT may request in writing a reduction of retention from 10% to five percent (5%) upon acceptable completion of at least 50% of the Work, as determined by SBCTA. All retained funds shall be released by SBCTA within sixty (60) calendar days after the last to occur of:
 - a. SBCTA's payment of the final invoice, unless SBCTA elects to audit CONSULTANT's records in accordance with this Contract. If SBCTA elects to audit, then 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 the audit; or
 - b. final resolution of all Stop Notices, claims for payment and/or other claims arising out of the Work performed under the Contract.
2. CONSULTANT, or subconsultant, shall return all monies withheld in retention from a subconsultant within thirty (30) days after receiving payment for Work satisfactorily completed and accepted, including incremental acceptances of portions of the Work by SBCTA. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over thirty (30) days may take place only for good cause and with SBCTA's prior written approval. Any violation of this provision shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or non-payment by CONSULTANT, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE consultants and subconsultants.

ARTICLE XXXIII. RESPONSIBILITY OF CONSULTANT

- A. 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 CONSULTANT under the Contract. The Contract includes reference to the appropriate standards for design or other standards for Work performance stipulated in the Contract.
- B. 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, public safety, and environmental considerations. At any time during performance of the Scope of Work, should CONSULTANT observe,

encounter, or identify any unusual circumstances or uncertainties which could pose potential risk to SBCTA or the Project, CONSULTANT shall immediately document such matters and notify SBCTA in writing. CONSULTANT shall also similarly notify SBCTA in regard to the possibility of any natural catastrophe, potential failure, or any situation that exceeds environmental, design, and/or construction assumptions and could precipitate a failure of any structure or other part of the Project. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SBCTA to understand and evaluate the magnitude and effect of the risk and/or uncertainties involved.

- C. INTENTIONALLY OMITTED
- D. INTENTIONALLY OMITTED
- E. INTENTIONALLY OMITTED
- F. INTENTIONALLY OMITTED

ARTICLE XXXIV. TECHNICAL DIRECTION

- A. 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:
 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.
 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.
 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.
 4. SBCTA 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 project 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.
- B. Technical Direction must be within the Scope of Work under this Contract. SBCTA does not have the authority to, and may not, issue any Technical Direction which:
 1. Increases or decreases the Scope of Work;
 2. Directs CONSULTANT to perform Work outside the original intent of the Scope of Work;

3. In any manner causes an increase or decrease in the Contract price as identified in this Contract, or the time required for Contract performance, unless expressly authorized by SBCTA policy;
 4. Changes any of the expressed terms, conditions or specifications of the Contract; unless identified herein;
 5. Interferes with the CONSULTANT's right to perform the terms and conditions of the Contract; or
 6. Approves any demand or claim for additional payment.
- C. Failure of CONSULTANT and SBCTA's Project Manager to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken, shall be subject to the provisions of the "DISPUTES" Article herein.
- D. All Technical Direction shall be issued in writing by SBCTA's Project Manager.
- E. CONSULTANT shall proceed promptly with the performance of Technical Direction, in the manner prescribed by this Article and within their authority under the provisions of this Article. If, in the opinion of CONSULTANT, any instruction or direction by SBCTA falls within one of the categories defined in B.1. through B.6. of this Article, 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's Project Manager shall:
1. Advise CONSULTANT in writing within thirty (30) calendar days after receipt of the CONSULTANT's letter that the Technical Direction is or is not within the scope of this Contract.
 2. Advise CONSULTANT within a reasonable time whether SBCTA will or will not issue a written amendment.
- F. There shall be no changes in CONSULTANT's Key Personnel as identified herein, without prior written approval by SBCTA's Project Manager.

ARTICLE XXXV. 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's Project Manager. CONSULTANT shall not substitute any key personnel without the prior written consent of SBCTA's Project Manager. 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
Ken Loncharich	Project Manager
George Malacalza	Resident Engineer
Abunnasr Husain	Assistant Resident Engineer/Structural Representative

ARTICLE XXXVI. 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 XXXVII. ADDITIONAL TERMINATION PROVISIONS

- A. In addition to the terms of Article VI, the following provisions apply to termination of the Contract.
- B. 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 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.
1. CONSULTANT shall deliver to SBCTA all deliverables prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA. Upon such delivery, CONSULTANT may then invoice SBCTA for payment in accordance with the terms of this Contract.
 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.
 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.
- C. 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.

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.
 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.
- D. 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 or any damages because of such termination.

ARTICLE XXXVIII. OPTION TERMS

INTENTIONALLY OMITTED.

ARTICLE XXXIX. ADDITIONAL PAYMENT TERMS.

A. ESCALATION.

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, not be seasonally adjusted, but will include a 12-month percent change. Escalation shall commence as of January 2026, and then shall be applied each January for the term of the Contract.

B. STATEMENT WITH INVOICES.

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.

C. JUNE INVOICES.

The invoice for Work performed in the month of June shall be submitted by July 10th.

ARTICLE XL. 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 XLI. PERMITS AND LICENSES

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

ARTICLE XLII. CONFLICT OF INTEREST CODE

See Article XIII.

ARTICLE XLIII. NOTIFICATION

All notices hereunder and communications regarding the interpretation of the terms of this Contract and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

To: WSP USA, INC.	To: SBCTA
862 E Hospitality Lane, Suite 350	1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92408	San Bernardino, CA 92410-1715
Attn: Ken Loncharich	Attn: David Tan
	Email: dtan@gosbcta.com
	Cc: Procurement Manager
Email: kenneth.loncharich@wsp.com	Email: procurement@gosbcta.com
Phone: 949-283-0854	Phone: (909) 884-8276

ARTICLE XLIV. 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" provisions in Articles VI and XXXVII.

ARTICLE XLV. 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 XLVI. 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 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 XLVII. 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 XLVIII. 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.

LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the Contract, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel.

Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against SBCTA based upon any contention by any third party that an employer-employee relationship exists by reason of this Contract.

ARTICLE XLIX. PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT

The LOCAL AGENCY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT or as promptly as fiscal procedures will permit. If SBCTA fails to pay promptly, SBCTA shall pay interest to CONSULTANT, which accrues at the rate of 10 percent per annum on the principal amount remaining due. Upon receipt of a payment request, SBCTA shall act in accordance with both of the following:

- A. Each payment request shall be reviewed by SBCTA as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- B. Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

ARTICLE L. ATTORNEYS' FEES

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

ARTICLE LI. 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 LII. 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 LIII. PRECEDENCE

- A. The Contract consists of the Contract Articles, Exhibit A "Scope of Work," Exhibit B "CONSULTANT's Approved Cost Proposal," SBCTA's Request For Proposals and CONSULTANT's Proposal, all of which are incorporated into this Contract by this reference.
- B. The following order of precedence shall apply: first, the Contract Articles; second, Exhibits A and B; third, SBCTA's Request For Proposals; and last, CONSULTANT's Proposal.
- C. 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 LIV. 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 LV. 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 LVI. DRUG FREE WORKPLACE

CONSULTANT agrees to comply with the Drug Free Workplace Act of 1990 per Government Code Section 8350 et seq, the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.; U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 CFR Part 32; and U.S. OMB regulatory guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.

ARTICLE LVII. 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 LVIII. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

CONSULTANT shall comply with all applicable provisions of the Americans With Disabilities Act (42 U.S.C. § 12101 et seq.) in performing Work under this Contract.

ARTICLE LIX. 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. and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387) as amended. CONSULTANT shall report each violation to SBCTA, who will in turn report each violation as required to assure notification to the Federal Awarding Agency and the appropriate EPA Regional Office. CONSULTANT agrees to include this requirement in all of its subcontracts which exceed \$100,000.

ARTICLE LX. TITLE VI ASSURANCES

CONSULTANT must adhere to the Title VI assurances listed below:

- A. During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:
1. **Compliance with Regulations:** CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
 2. **Nondiscrimination:** CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the agreement covers a program set forth in Appendix B of the Regulations.
 3. **Solicitations for Sub-agreements, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
 4. **Information and Reports:** CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
 5. **Sanctions for Noncompliance:** In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed ninety days (90); and/or
 - ii. cancellation, termination or suspension of the Agreement, in whole or in part.

6. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.
- B. CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- C. During the performance of this Contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the “CONSULTANT”) agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to:
- Pertinent Non-Discrimination Authorities:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
 - Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.) as amended; (prohibits discrimination on the basis of disability); and 49 CR Part 27;
 - The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123) as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987 (PL 100-209) (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
 - The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance (Provides that national origin discrimination includes discrimination based on limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100));
- Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 et seq) (prohibits discrimination based on sex in education programs or activities).

D. All subcontracts shall contain the provisions of this Article.

ARTICLE LXI. ENTIRE DOCUMENT

- A. 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.
- B. 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.
- C. 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 LXII. CONTRACT

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

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

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

**WSP USA, INC.,
A NEW YORK CORPORATION**

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

By: _____
Derich Sukow
Senior Vice President

By: _____
Raymond W. Wolfe
Executive Director

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____
Julianna K. Tillquist
General Counsel

CONCURRENCE

By: _____
Alicia J. Bullock
Procurement Manager

DRAFT

Attachment: 24-1003120 (10713 : US 395 Phase 2 Widening Project - Construction Management Services Contract Award)

Exhibit A
“SCOPE OF WORK”

DRAFT

INDEX

- A. DESCRIPTION OF SERVICES
- B. PERFORMANCE REQUIREMENTS
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A. DESCRIPTION OF SERVICES

The San Bernardino County Transportation Authority (SBCTA) will utilize the services of CONSULTANT to support the construction activities for the Project. The CONSULTANT will provide construction management, materials testing, construction surveying for the Project. A description of the Project is given below.

US 395 Widening Phase 2 Project

The United States Highway 395 (US-395) Phase 2 Freight Mobility and Safety Project is a cooperative effort between San Bernardino County Transportation Authority (SBCTA), the California Department of Transportation (Caltrans), the City of Victorville, and City of Hesperia to relieve congestion and enhance the safety and operational efficiency of the corridor by constructing a continuous four-lane highway, which would improve passing opportunities and add capacity to meet future traffic volumes. The existing US-395 has two lanes within the project limits, one lane in each direction, with additional turning lanes at intersections. This Project would widen US-395 from 2 lanes to 4 lanes, with a continuous median, for a distance of approximately 7 miles between I-15 and SR-18 (Palmdale Rd) including adding a bridge over the California Aqueduct.

SBCTA intends to advertise, award and administer one construction contract for this project. The successful consultant firm will provide the requested construction management and support services.

Services

Services are anticipated to generally include, but are not limited to the following: participation in the evaluation of scheduling of the proposed project; constructability review; oversight, survey and inspection of early utility relocation, construction project advertising, bid analysis, and award; construction inspection; construction surveying, materials testing, landscape inspection, contractor interface and contract administration; office engineering; and other assorted duties as appropriate in managing construction of a Caltrans and city roadway improvement project.

It is expected that the Consultant will assign a full-time Resident Engineer to coordinate all contract and personnel activities for all phases of construction. Other Resident Engineer(s) and inspection personnel may be assigned to direct and coordinate all project specific field activities and responsibilities as needed for satisfactory performance on the project. The Resident Engineer assigned for this project shall be licensed as a Professional Civil Engineer in the State of California at the time of proposal submittal and through the duration of the contract. The Consultant is expected to provide a Survey Project Manager, Materials Testing/Source Inspection Project Manager, and Landscape Architect to administer the construction support services requested herein and to assign qualified field personnel to perform the requested services. Furthermore, the Resident Engineer shall act as the public outreach liaison to assist the Authority's Public Information Office in implementing the Public Outreach Program established for this project.

Insofar as the Consultant's approach described in the Proposal, the scope of responsibility and the total number of personnel assigned to each phase is left to the discretion of the Consultant. 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 both during early utility company relocations and during the construction phase.

SBCTA anticipates that the total contract will be approximately 36 months in duration, with preconstruction services starting in May 2024, early utility relocation activities starting in mid- 2024

through mid-2025. SBCTA anticipates advertising for the construction contract in January 2025, awarding the construction contract in April 2025 with Construction LNTP of 120-calendar day procurement period of long lead items, followed by Construction NTP in August 2025, following completion of utility relocations and project completion in February 2027 (19 Months), in addition of 2 months of project closeout. The estimated construction capital cost of the project is approximately \$35 million.

CONSULTANT shall provide qualified construction management and inspection, materials testing, construction surveying and public relations personnel to perform a wide variety of construction management, support and contract administration duties as outlined in this Scope of Services for the Project.

The SBCTA Director of Project Delivery has designated a Construction Manager to coordinate all construction activities.

The CONSULTANT shall report to and receive direction from SBCTA through the Construction Manager or assigned designee(s). The SBCTA Construction is responsible for coordination of all SBCTA construction activities and for coordinating the efforts of the total construction team. The SBCTA Construction Manager will be the main contact and primary source of information between SBCTA, cities, outside agencies, supporting consultants and the public for the construction projects.

B. PERFORMANCE REQUIREMENTS

Construction Management: CONSULTANT shall furnish a Project Manager to coordinate CONSULTANT operations with SBCTA. The Project Manager shall be responsible for all matters related to CONSULTANT personnel and operations. The Project Manager may also serve as the Resident Engineer.

CONSULTANT shall also furnish a Resident Engineer and a Structures Representative. The Resident Engineer shall be assigned to direct and coordinate construction activities under this contract. Other Assistant Resident Engineers and Assistant Structures Representatives may be assigned to each specific project responsibilities as needed. The Resident Engineer and Structures Representative shall be a Civil Engineer registered in the State of California and shall be responsible in charge of construction management and construction activities within the Project.

The number of CONSULTANT personnel assigned to the Project will vary throughout the duration of the contract. CONSULTANT personnel will be assigned, in varying levels of responsibility, as needed by the CONSULTANT 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 CONSULTANT will jointly determine the quality and quantity of services that are required by CONSULTANT personnel. Personnel selected for assignment by CONSULTANT 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 CONSULTANT personnel is unsatisfactory to SBCTA, SBCTA may release him/her by written notice and may request another qualified person be assigned.

If CONSULTANT personnel are on leave of absence, the Project Manager shall provide equally qualified replacement personnel, approved by SBCTA, until the assigned personnel returns to the Project

The typical workday includes all hours worked by the construction Contractor. If necessary, overtime for CONSULTANT 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 CONSULTANT personnel. The Project Manager, with prior concurrence from SBCTA, shall have the authority to increase, decrease, or eliminate CONSULTANT personnel work hours dependent on the schedule and requirements of the construction Contractor. All overtime required by CONSULTANT personnel shall be approved and authorized by SBCTA prior to each occurrence.

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

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

CONSULTANT personnel shall assist SBCTA and local agencies in obtaining compliance with the safety and accident prevention provisions of the Project. Local agencies will retain jurisdictional control for traffic control.

All services required herein shall be performed in accordance with California Department of Transportation guidelines, regulations, policies, procedures, manuals, and standards, except as noted in the special provisions.

Material Testing & Source Inspection: The number of field testing and source inspection personnel assigned to the Project will vary throughout the duration of the construction contract. CONSULTANT certified material 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 Contractor.

Material 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. CONSULTANT 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 each project. CONSULTANT is therefore encouraged to provide, wherever and whenever possible, the same personnel for the duration of construction of each project.

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

Consultant shall be responsible for finalizing a Source Inspection Quality Management Plan (SIQMP) to match the project requirements, assist SBCTA in gaining Caltrans approval, and manage the SIQMP. The SIQMP shall meet SBCTA and Caltrans requirements. Consultant shall provide Structural Materials Representative (SMR), Steel inspectors, Non-destructive Steel Inspectors, Coating Inspectors, Precast Concrete Inspectors and other source inspectors, as needed.

All CONSULTANT personnel will be knowledgeable of, and comply with, all applicable local, state, and federal regulations. All personnel shall cooperate and consult with SBCTA during the course of the contract; and perform other duties as may be required to assure that the construction is being performed in accordance with the Project plans and specifications. CONSULTANT's personnel will keep records and document the work as directed by the Resident Engineer.

All services required herein will be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards.

Construction Surveying: CONSULTANT will furnish surveying crew(s) to perform construction surveys for the Project. The number of survey crew(s) assigned to the Project may vary throughout the duration of the construction contract to meet the Project needs. CONSULTANT personnel will be assigned as needed by the Resident Engineer to meet the schedule of the construction contractor.

Construction surveying services will be provided on an on-call basis. It is the intent of SBCTA to maintain a consistency of construction survey quality throughout each phase of each project. Therefore, CONSULTANT is encouraged to provide the same field personnel for the duration of construction. It is important that the Field Party Chief(s) assigned to a project be completely familiar with the survey requirements and the assignments for the Project.

Construction surveying will not be performed when conditions such as weather, traffic, and other factors prevent safe and efficient operation.

CONSULTANT personnel will:

- Be knowledgeable of, and comply with all, applicable local, Caltrans, state, and federal regulations.
- Cooperate and consult with SBCTA officials during the course of the contract.
- Perform duties as may be required to assure construction is performed in accordance with the Project plans and specifications.
- Keep records and document work as directed by SBCTA Construction Manager.

All services required herein will be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards.

C. DUTIES AND RESPONSIBILITIES

1. Pre-construction Services

a. Schedule

CONSULTANT shall review the proposed Project schedule, compare it to the Project plans and specifications, and provide recommendations to SBCTA, as appropriate, to ensure efficiency of Contractor and CONSULTANT operations and safe and expeditious completion of the Project.

b. Budget

CONSULTANT shall review the Project estimate, quantities and provide recommendations to SBCTA, as appropriate, to ensure efficient utilization of funds and control of project costs.

- c. Constructability Review
CONSULTANT shall review Project plans and special provisions for possible errors and deficiencies and report such findings to SBCTA in a format provided by SBCTA.
 - d. Utility relocation assistance
2. Bid Process
- a. Bid Documents

CONSULTANT shall assist SBCTA, as requested, with the following tasks:
 - 1) Review of bid documents
 - 2) Preparation of bid tabulations
 - b. Pre-construction Meetings

CONSULTANT shall assist SBCTA in conducting one, or more, pre- construction meetings with all involved parties on the Project. Parties may include, but are not limited to, the Contractor, design engineer, Caltrans, County and City staff, utility companies, and developers.
 - c. Contract Award

CONSULTANT shall assist SBCTA, as requested, with the following tasks:
 - 1) Review of bid for completeness and responsiveness.
 - 2) Perform bid analysis.
 - 3) Development of contractor payment schedules, and other procedural items.
 - 4) Checking Contractor references, licenses, insurance, and sureties.
 - 5) Coordination with prospective Contractor for award of construction contract(s).

All processes will be consistent with procedures outlined by the California Department of Transportation for Special Funded Programs and Local Assistance Procedure Manuals.
3. Project Administration
- a. CONSULTANT shall administer Project construction contracts using Caltrans Construction Manual as a guideline.
 - b. CONSULTANT shall conduct regular Project coordination meetings with Contractor, SBCTA, local agencies, and design engineer, as appropriate.
 - c. CONSULTANT shall prepare Contractor progress payments and maintain payment records and supporting documentation. All progress payments shall be reviewed by SBCTA for approval.

- d. CONSULTANT shall provide reports as needed to comply with specific funding requirements.
- e. CONSULTANT shall establish and maintain Project records in accordance with the Caltrans Construction Manual. Project record keeping shall include, but is not limited to, correspondence, memoranda, contract documents, change orders, claims, SBCTA and engineer directives, meeting minutes, shop drawings, supplementary drawings, and requests for payment. CONSULTANT shall maintain a record of the names, addresses, and telephone and fax numbers of the Contractors, subcontractors, and principal material suppliers.
- f. CONSULTANT shall establish and maintain a filing system in hard copies files and in electronic forms for each Project using the Caltrans Construction Manual as a guideline. Electronic data documentation will be required to be uploaded weekly to the SBCTA Major Projects Portal (LaserFiche?)
- g. CONSULTANT shall monitor Contractors' construction schedules on an ongoing basis and alert SBCTA to conditions that may lead to delays in completion of the Project.
- h. CONSULTANT shall prepare and submit a monthly Activity Summary Report for the Project in a format approved by SBCTA. The activity report shall include among other items status of SWPPP issues, RFIs, contract change orders, and notice of potential claims; construction activities completed, ongoing, and upcoming; status of Project budget and schedule, and other highlights and critical issues.
- i. CONSULTANT shall review and ensure compliance with environmental requirements.
- j. CONSULTANT shall participate in partnering sessions with the Contractor, SBCTA, and Local Agencies, as required.
- k. CONSULTANT shall ensure that the Project meets all provisions of the SBCTA Construction Materials Quality Assurance Program and Caltrans Quality Assurance Program Manual.
- l. CONSULTANT shall review Contractors' certified payroll records and ensure compliance with the requirements of the construction contract.
- m. CONSULTANT shall ensure that the Project meets all provisions of the Storm Water Pollution Prevention Plan (SWPPP).
- n. CONSULTANT shall assure that the Project meets all applicable regulations of the Air Quality Management District (AQMD) and State Water Resource Control Board (SWRCB).
- o. CONSULTANT shall maintain redlined as-built plans on an ongoing basis throughout the duration of the Project. Redlined plans shall show all changes made to the original contract plans, each change identified with the name of the approver, date of change approval, and CCO number, if applicable

4. Construction Coordination

- a. CONSULTANT shall provide a minimum of one qualified Resident Engineer and Structures Representative to effectively manage the Project.
- b. CONSULTANT Resident Engineer shall act as a prime point of contact between Contractor, SBCTA, CONSULTANT's construction surveyor, CONSULTANT's materials inspector, and utility companies. CONSULTANT may, when requested by SBCTA, act as point of contact between design engineers, cities, and the public. CONSULTANT shall ensure coordination with property owners adjacent to Project right-of-way to ensure timely communication regarding property-condition survey and construction activities and scheduling.
- c. CONSULTANT shall maintain regular contact with SBCTA's Construction Manager.
- d. CONSULTANT shall coordinate utility relocations with utility companies and their designee(s), as well as the utility inspector.
- e. CONSULTANT shall proactively review Project plans and special provisions for possible errors and deficiencies prior to construction of any specific element and report such findings to SBCTA. Should SBCTA determine that changes are necessary, CONSULTANT shall assist in implementation and processing of change orders in accordance with contract documents.
- f. CONSULTANT shall proactively review Project plans and special provisions; monitor, coordinate, and track construction progress schedule and RFIs; and communicate with various agencies prior to construction of any specific elements to ensure the Project proceeds on schedule and according to the order of work in the plans and special provisions. CONSULTANT shall expedite work, as required, to maintain schedule in conjunction with the overall construction staging program.
- g. CONSULTANT shall coordinate review of shop drawings and Requests for Information (RFI) with the SBCTA Construction Manager. CONSULTANT shall log and track all submittals and requests.
- h. CONSULTANT shall provide a qualified SWPPP Coordinator who along with the Resident Engineer shall review and certify contractor prepared Storm Water Pollution Prevention Plans (SWPPP) and coordinate approval with SBCTA and the State Water Resource Control Board. The SWPPP Coordinator shall be at a minimum a Qualified Storm Water Pollution Prevention Plan (SWPPP) Developer (QSD) and a Qualified SWPPP Practitioner (QSP). CONSULTANT shall provide at a minimum weekly SWPPP monitoring and shall cooperate with all monitoring agency inspections and field reviews.
- i. CONSULTANT shall coordinate the implementation of any changes with the SBCTA Construction Manager and the design engineer.
- j. CONSULTANT shall review and approve falsework and shoring plans.
- k. CONSULTANT shall review and approve Traffic Control Plans and forward to SBCTA for Caltrans/City/County approvals, as necessary.

1. CONSULTANT shall coordinate all Project construction activities with other on-going projects within and adjacent to the Project limits.

5. Construction Inspection

- a. CONSULTANT shall coordinate all required inspections necessary for the Project. CONSULTANT shall ensure that appropriate City and local agencies are notified and present as required throughout the Project. CONSULTANT shall notify SBCTA immediately regarding any directives, recommendations, notices, etc. received from agencies other than SBCTA.
- b. CONSULTANT shall perform daily on-site observations of the progress and quality of construction to determine if the work being performed is in general conformance with the contract documents, all applicable laws, codes, and ordinances.
- c. CONSULTANT shall exercise reasonable care and diligence to discover and promptly report to SBCTA any and all defects or deficiencies in the materials or workmanship used in the Project.
- d. CONSULTANT personnel assigned to the Project shall be thoroughly familiar with Caltrans Standard Specifications, Caltrans Standard Plans, Caltrans Erosion Control and Highway Planting requirements, safety standards and State Water Resources Control Board requirements. CONSULTANT personnel shall have the ability to read and interpret construction plans and specifications. CONSULTANT personnel shall also have knowledge of State of California Construction Safety Orders (Cal-OSHA) and traffic control practices as specified in the Work Area Traffic Control Handbook (WATCH). In addition, CONSULTANT personnel shall be thoroughly familiar with the construction requirements of Caltrans' Storm Water Pollution Prevention Program.
- e. Assignments to be performed by CONSULTANT personnel shall include, but are not limited to, the following:
 - 1) Paving and subgrade inspection, sub-surface & finish surface drainage inspection, structures and foundation inspection, electrical inspection for traffic, ramp meter and irrigation control equipment, signing and striping inspection, quantity calculations, checking grade and alignment, construction traffic control, soil amendments and plant material identification & quality control, hardscape inspection, trenching & irrigation inspection and duties that may be required to determine that construction of the Project is being performed in accordance with the contract documents.
 - 2) Identifying actual and potential problems associated with the Project and recommending sound engineering solutions.
 - 3) Identifying common plant diseases and/or pests together with their respective eradication techniques, directing of plant adaptability requirements along with proper planting & pruning techniques, and avoiding potential problems associated with the Project by recommending sound engineering solutions.
 - 4) Perform basic sampling of construction materials in the field per California Test Method 105 and 125 by both the prime and subconsultant personnel.

- 5) Maintaining awareness of safety and health requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions for the protection of the public and Project personnel.
- 6) Preparing complete and accurate daily reports, calculations, project records, payment quantity documents, reports, and correspondence related to Project activities.
- 7) Preparing construction sketches, drawings, and cross-sections, as necessary.
- 8) Assisting in the preparation of as-built plans.
- 9) Providing inspections for environmental compliance.
- 10) Maintaining awareness of water discharge requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions.
- 11) Monitoring Contractors' compliance with applicable regulations required by AQMD.
- 12) Other duties as may be required or reasonably requested.

6. Project Support

a. Construction Surveys

CONSULTANT shall perform construction surveying services, field calculations, and home office calculations to support construction of the Project. CONSULTANT may be requested to review available survey data, construction plans, and right-of-way plans to confirm compatibility and to identify discrepancies prior to and during construction of proposed projects. The Resident Engineer will assign survey work to the CONSULTANT as needed by issuing a "Request for Survey Services". Requests may include, but not be limited to, the following types of surveys and related services:

1) Construction Surveys

CONSULTANT shall perform construction staking and calculations as needed.

- a) Survey calculations and adjustments shall be performed with established and computed coordinates based on the California Coordinate System.
- b) Cross-section data collection shall be performed by conventional and terrain line interpolation survey methods.
- c) Survey data will include topography, cross-section, and other survey data in computer formats compatible with the Caltrans computer survey and design systems.
- d) Prepare and maintain survey documents. Survey documents include survey field notes, maps, drawings, and other survey documents.
- e) Perform construction staking, including but not limited to:
 - i. Utility relocations

- ii. Clearing limits
 - iii. Slope staking
 - iv. Storm drain, sanitary sewer, and irrigation systems
 - v. Drainage structures
 - vi. Curbs, gutters, and sidewalk
 - vii. Horizontal and vertical control for structures and portions of structures (bents, abutments, wingwalls, etc.)
 - viii. Rough grade
 - ix. Finish grade
- f) Monitor for settlement, if required.
- g) Global Positioning Satellite (GPS) equipment shall be made available, if required by SBCTA.

2) Grid Grades

Grid grade data shall provide pavement elevations at the station line, the left edge of pavement, the right edge of pavement, and the right edge of travel way at 25-foot intervals for travel lanes.

3) Open Ended Traverses and Profile Data Sheets

Separate open-ended traverse calculations and point maps shall depict plan data for station lines, utility lines, wall layout lines, and abutment/bent alignment. Specific information to be shown will be part numbers, coordinates, bearings, and curve data.

Profile data sheets are required for all profiles shown on the plans identifying vertical design elements such as grade, point of intersection (PI) location, beginning of vertical curve (BVC) location, end of vertical curve (EVC) location, and curve length.

4) Three Line Profiles

Separate profile plots are required for the left edge of pavement, the right edge of pavement, and the edge of shoulder for all travel lanes.

5) Right of Way Lines

Existing right of way and easements will be established from Local Agency's record information and existing monumentation.

- a) Right of way monumentation shall be renewed and restored in accordance with Section 10.4 of the Caltrans "Survey Manual" and the State of California Land Surveyor's Act.
- b) Corner records and records of surveys shall be prepared and filed in accordance with the applicable standards and the State of California Land Surveyor's Act and the California Subdivision Map Act.

- c) Perpetuate existing monumentation, which includes restoring, renewing, referencing, and resetting existing boundary related monumentation. In addition, stake areas where construction disturbs the existing right of way, preparing and filing required maps and records.
- d) New right of way and easements will be established from plans, right of way maps, utility drawings, and Local Agency record information, and existing monumentation.
- e) Right of Way Surveys, which includes research and preparation filing of required maps and records. In addition, locate and set monuments for right of way and easement lines, staking for right of way and easement fences.
- f) Final monumentation, which includes setting of centerline points of control upon completion of construction.

6) Special Design – Data Surveys

Includes drainage, utility, and surveys required for special field studies.

7) Control Survey

Includes Project control surveys, aerial mapping control surveys, horizontal and vertical control surveys. In addition, control surveys will include restoration, renewal, reference, relocation, and resetting of existing control monumentation. CONSULTANT will be required to provide horizontal and vertical control at the end of each bridge.

8) Topographic Surveys

Topographic surveys will normally be compiled by ground survey methods only.

CONSULTANT will provide all necessary Project related surveys and construction staking, including horizontal and vertical control, right of way, and easements. CONSULTANT shall coordinate all staking and verify accuracy. CONSULTANT shall ensure timely coordination of all staking requests from the Contractor.

b. Materials Testing, Source Inspection and Geotechnical Services

- 1) CONSULTANT will provide experienced personnel, equipment, and facilities to perform various construction materials sampling and testing. Laboratory and field materials testing will be used to ensure that structure and roadway construction work conforms to California State Department of Transportation (Caltrans) standards, specifications, and special provisions for material quality and workmanship.
- 2) All field and laboratory testing are to be performed in accordance with California Test Methods.
- 3) CONSULTANT will be responsible for the accuracy and completeness of all test data compilation and results.

c. Public Outreach

General Public Outreach Plan will be provided and administered by SBCTA.

- a) SBCTA's primary goal is to assure the public that SBCTA is a public agency that delivers quality transportation projects and trustworthy, accurate and timely public information.
- b) SBCTA will provide the primary outreach effort with supplemental support as requested from CONSULTANT. This will be a targeted approach with incremental outreach based on construction schedule and staging. The primary target audiences identified for this Project include, but are not limited to:
 - i. LOCAL AGENCY
 - ii. SBCTA Board
 - iii. LOCAL AGENCY and area Emergency Service Providers
 - iv. School Transportation Coordinator(s)
 - v. Local Business Community
 - i) Specific businesses with expanding priority based on proximity to work zone and detours
 - ii) Chamber of Commerce
 - vi. Commuters
 - vii. Recreational Travelers
 - viii. Trucking Industry
 - ix. Local media
 - i) Print
 - ii) Radio
 - iii) Television
- c) In the weeks prior to the selection of a construction contractor, SBCTA may coordinate an Emergency Responders Project Briefing to highlight the Project details and possible access challenges for consideration by the Project team.
- d) Following the emergency responders briefing, SBCTA may coordinate a Chamber of Commerce Project Briefing to highlight the Project benefits, possible construction schedule and traffic management plan.
- f) Just prior to the start of field construction activities, SBCTA and CONSULTANT (includes all PR subs) may coordinate a groundbreaking media event with the LOCAL AGENCY to ceremoniously open the Project. CONSULTANT will be called up on to develop (with input from SBCTA) and maintain a task list of deliverables for this event. CONSULTANT will acquire the necessary items authorized for the event. CONSULTANT will be responsible for the set up and breakdown of the event site.

- g) Prior to construction beginning, SBCTA and CONSULTANT may coordinate a community meeting to share Project information, construction scheduling, detour information and expected challenges with the general public. CONSULTANT will be called up on to develop (with input from SBCTA) and maintain a task list of deliverables for this event. CONSULTANT will acquire the necessary items authorized for the event. CONSULTANT will be responsible for the set up and breakdown of the event site. Staffing this event will be determined based on availability.
- h) Near the completion of the construction Project, SBCTA and CONSULTANT will coordinate a ribbon-cutting media event. CONSULTANT will be called upon in a similar fashion to the groundbreaking event.
- i) At various stages throughout the Project, SBCTA will request support from CONSULTANT for the following items:
- i. Establish and maintain stakeholder and/or 'interested parties' list(s) – used for sharing Project updates during Project construction. May need to be filtered to specific audiences (i.e. emergency responders, city government, etc.)
 - ii. Development of a Project fact sheet (include Project description, Project budget, Project schedule, SBCTA contact information, LOCAL AGENCY contact information, photos, logos, etc.)
 - iii. Weekly media advisories (use SBCTA template). CONSULTANT (or sub) will make weekly contact with Project team to establish what road or lane closures (and associated detours if applicable) will be taking place, develop the advisory, send to SBCTA Public Information Office for approval, submit to webmaster for posting, distribute to appropriate media and stakeholder list.
 - iv. Emergency notices – when needed.
 - v. Develop web content for project tab on SBCTA website. This page should include the same elements as the fact sheet with expanded detail when possible. If the information is dynamic, please provide updates to SBCTA Public Information Office for approval prior to submitting it to webmaster.
- 2) All requests for speaking to government councils, boards, chambers of commerce or similar business or social groups shall be directed to the SBCTA Public Information Office before agreeing to appear.
- 3) All media inquiries shall be directed to the SBCTA Public Information Office.

d. Permits

CONSULTANT shall review the Project for permit compliance and coordinate with SBCTA and the design engineer to ensure that necessary permits are obtained. CONSULTANT shall assist SBCTA in the coordination, timely processing and verification of approval for all permits. CONSULTANT shall maintain permits and permit documentation on site.

7. Cost and Schedule

a. CONSULTANT shall monitor and track the following:

- 1) Contract pay item quantities and payments
- 2) Contract change orders
- 3) Supplemental work items
- 4) Agency furnished materials
- 5) Contingency balance
- 6) Project budget

b. CONSULTANT shall review and monitor Contractor's schedule by keeping their own updated schedule to "shadow" that of the contractor and inform SBCTA of any significant changes or deviations in the schedule.

c. CONSULTANT shall provide and maintain a Project staffing plan of field office personnel based on the Contractor submitted baseline schedule update. In cooperation with SBCTA, the staffing plan shall be periodically updated to reflect Project progress and needs.

8. Contract Change Orders and Claims

a. CONSULTANT shall receive and evaluate requests for changes and/or substitutions by the Contractor. Contract Change Orders submitted to SBCTA shall be accompanied by CONSULTANT recommendations. Where applicable, CONSULTANT shall convey proposed changes to the design engineer, or other Project consultants. If the requested changes are accepted, CONSULTANT shall negotiate and prepare appropriate Contract Change Orders.

b. CONSULTANT shall attempt to avoid unnecessary Contract Change Orders. When a Contract Change Order is necessary, CONSULTANT shall consult with SBCTA prior to its preparation. Unless directed otherwise by SBCTA, the preferred method of payment for Contract Change Orders should be as follows:

- 1) Agreed Price
- 2) Adjustment in compensation to a bid item
- 3) Time and materials or Force Account

CONSULTANT shall perform force account analysis to validate cost submitted by the Contractor for contract change orders with agreed unit price, lump sum price, and adjustment in components. Analysis shall be based on realistic production and resource needs to complete the work.

- c. CONSULTANT shall attempt to identify all potential claims, track and monitor unresolved claims. The CONSULTANT shall implement appropriate claims avoidance processes where in the best interests of SBCTA as determined by SBCTA's Construction Manager.
- d. CONSULTANT shall assist SBCTA, as requested, in the identification, resolution, and final disposition of claims filed by the Contractor or third parties against SBCTA or the Project.

9. Safety

In addition to the requirements specified elsewhere in this contract, the following shall also apply:

- a. CONSULTANT shall implement and conduct a comprehensive safety program including regular tail-gate safety meetings for CONSULTANT personnel. CONSULTANT shall provide SBCTA with monthly status of safety reports.
- b. CONSULTANT shall comply with State of California Construction Safety Orders and provisions of the Caltrans Construction Manual.
- c. CONSULTANT shall provide appropriate safety training for all CONSULTANT field personnel.
- d. CONSULTANT shall provide all necessary safety equipment as required for CONSULTANT personnel.

10. Project Close Out

- a. CONSULTANT shall prepare a list of items to be completed and/or corrected by the Contractor for final completion of the Project.
- b. CONSULTANT shall collect and furnish as-built information to the design engineer for preparation of as-built drawings including but not limited to pre-stress drawings and pile logs, as applicable.
- c. CONSULTANT shall review and verify the completeness of as-built drawings.
- d. CONSULTANT shall conduct a final walk-through with SBCTA, Local Agencies, Contractors, and design engineers.
- e. CONSULTANT shall prepare final construction reports including the Project Completion Report.
- f. CONSULTANT shall prepare and deliver to SBCTA all Project files.
- g. CONSULTANT shall assist SBCTA and Contractor in obtaining final release of all Project permits.
- h. Project closeout services will be completed within two months of project acceptance.

D. DELIVERABLES

1. Inspector daily reports, extra work diaries and Resident Engineers' daily diaries.
2. Monthly Project Summary Reports and SIQMP Monthly Reports.
3. Weekly update of all files to SBCTA Portal.
4. Monthly Contractor progress payments, back-up documentation, and Contractor payment records.
5. Contractor final payment documents, delivered to SBCTA no later than ten (10) working days after Acceptance by SBCTA of the completed construction Project.
6. Project Completion Report documents per Local Assistance Procedure Manual and Caltrans Construction Manual.
7. All Project files, Project reports, Record As-builts, correspondence, memoranda, shop drawings, Project logs, schedule updates, change order data, claims and claim reports, and Contractor payment records per Caltrans Construction Manual.
8. Certified payrolls and fringe benefit statements for all employees, CONSULTANT and Contractor, who are subject to the State and/or Federal prevailing wage rates.
9. American For Disabilities Act certification of project per Caltrans Standards.
10. 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 CONSULTANT throughout the duration of the Project and delivered to SBCTA with the Project files.
11. Record of Survey and Right of Way Monumentations and recording with County.
12. Unless otherwise specified in the survey request, the deliverables shall conform to the following:
 - a. Survey points, lines, and monuments shall be established, marked, identified, and referenced as required by survey request and requirements herein.
 - b. Survey notes, drawings, calculations, and other survey documents and information shall be completed as required by the survey request and the requirements herein.
 - c. All original survey documents resulting from this contract, including original field notes, adjustment calculations, final results, and appropriate intermediate documents, shall be delivered to the Resident Engineer and shall become the property of SBCTA. A copy of all survey documents furnished by SBCTA shall be retained by CONSULTANT for future reference.

When the survey is performed with a total station survey system, the original field notes shall be a hard copy in a readable format of the data (observations) as originally collected and submitted by the survey party. The hard copy shall be signed by the Party Chief. If the Party Chief is not licensed, the person in “responsible charge” will be required to sign.

- d. Deliverables to the Resident Engineer shall follow the format specified below:
 - 1) Horizontal Control
 - 2) Alpha numeric hard copy point listing with adjusted California Coordinate System northing and easting and the appropriate descriptions.
 - 3) Vertical Control
 - 4) Alpha numeric hard copy benchmark listing with adjusted elevations compatible with the design datum.
 - 5) Topography
 - 6) Alpha numeric hard copy listing, hard copy drawing, and computer aided drawing and design (CADD) digital drawing. The CADD drawing shall be compatible with the systems utilized by Caltrans.

- e. Data collection method(s) used to collect cross-section data and the coding (feature description) of terrain data for cross-sections shall conform to the survey request requirements. Deliverables shall depend on the data collection method(s) as follows:
 - 1) Conventional Cross – Sections (each cross – section):
For each cross - section and alpha numeric listing, a hard copy drawing, and a computer formatted file compatible with the systems utilized by Caltrans.
 - 2) Terrain Line Interpolation Cross – Section Data (each terrain line interpolation survey):
Terrain line interpolation cross – sections shall include an alpha numeric listing, a hard copy plan view drawing of the terrain lines, and a computer input file. The computer input file shall be provided in a format compatible with the systems utilized by Caltrans.
 - 3) Data Collector Data
If specified in the survey request, the raw data from the data collector shall be provided in a format conforming to the survey request requirements.
 - 4) Other — As specified in the survey request.

E. EQUIPMENT AND MATERIALS TO BE PROVIDED BY CONSULTANT

1. CONSULTANT 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 are not to be included in Attachment B of Consultants Cost Proposal and are part of the consultants overhead. Only those items authorized by SBCTA in Attachment B, CONSULTANT Cost Proposal, shall be reimbursed by SBCTA.
2. CONSULTANT personnel shall be provided with vehicles suitable for the location and nature of the work involved. Vehicles shall be equipped with flashing yellow lights, either permanently or temporarily affixed.

3. CONSULTANT personnel shall be provided with a mobile radio, cellular phone, or other means to ensure full-time communication. If a radio system is to be used, CONSULTANT shall provide a base station at the field office.
4. CONSULTANT personnel shall be provided with all applicable standard plans, specifications, and other standards as appropriate (see item G below).
5. For Materials Testing, CONSULTANT 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 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.
6. For construction surveying, CONSULTANT and staff shall have adequate equipment and supplies to complete the required survey work. Equipment and supplies shall, include, but not be limited to:
 - a. Survey vehicles:
Survey vehicles will be suitable to perform the required work in varying terrain and conditions encountered on the Project. Vehicles shall be fully equipped with all necessary tools, instruments, supplies, and safety equipment required to perform the work accurately, efficiently, and safely. Vehicles shall be equipped with a flashing yellow beacon light.
 - b. Data Processing Systems:
Data processing systems shall include hardware and software to:
 - 1) Performing survey and staking calculations from the design plans and specifications
 - 2) Reduce survey data collected with conventional and total station survey systems
 - 3) Perform network adjustments for horizontal and vertical control surveys
 - 4) Format survey data to be compatible with the Caltrans computer survey and data system.
 - c. Drafting equipment and supplies.
 - d. Digital calculators.
 - e. Hand tools as appropriate for the requested survey work.
 - f. Traffic cones (minimum 25). Traffic cones shall be 28 inches in height (minimum).

- g. Traffic control devices as required to perform the requested survey work. Traffic control devices include signs, sign bases, flags, and hand-held signs.
- h. Leveling instruments and equipment:
 - 1) Self-leveling level. Precision: Standard deviations in one mile of double run leveling 0.005 feet or less.
 - 2) Suitable level rods for the work to be performed.
- i. Distance measuring instruments and equipment:
 - 1) Electronic distance measurer (EDM). Precision: standard deviation 3 mm plus 3 PPM, or less; Range: Minimum one mile under average atmospheric conditions.
 - 2) Prisms, sufficient to perform the required work.
 - 3) Tapes; steel, cloth.
- j. Angle measuring instruments and equipment:
 - 1) Theodolite for non-control surveys; Precision: direct circle reading to three seconds, or equivalent, horizontal and vertical.
 - 2) Targets as required to perform the work.
- k. When required for efficient survey operations, total station survey systems consisting of an electronic angle measuring instrument, EDM, and electronic data collector shall be provided. The angle measuring instruments and EDM shall conform to the requirements for the equipment previously listed.
- l. Radio or cellular communications equipment for communication between field office and field crews.
- m. Caltrans manuals, standards, forms, and other policies and procedures to be followed to perform the required work.

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.
- 3. SBCTA Construction Management Forms including SBCTA Construction Materials Quality Assurance Program, sample SIQMP and appropriate forms for recording test data in accordance with Caltrans practices and procedures outlined in the "Manual of Test".

G. STANDARDS

All construction inspection, surveys, materials sampling and testing, and contract administration shall be in accordance with the Project bid documents, special provisions, plans, and current Caltrans Manuals including:

1. Construction Manual and its revisions
2. Bridge Construction Records and Procedures Manual
3. Quality Assurance Program Manual
4. Manual of Traffic Controls for Construction and Maintenance Work Zones
5. Caltrans Standard Specifications and Standard Plans
6. Caltrans Storm Water Pollution Prevention Plan (SWPPP) and Water Pollution Control Program (WPCP) Preparation Manual
7. Manual of Test (3 volumes)
8. Survey Manual
9. District 8 Standard Staking Procedures Manual

Work not covered by the manuals shall be performed in accordance with accepted professional standards.

Surveys performed by CONSULTANT shall conform to the requirements of the Land Surveyor's Act. In accordance with the Land Surveyor's Act, "responsible charge" for the work shall reside with the Licensed Land Surveyor or a pre-January 1, 1982, Registered Professional Civil Engineer in the State of California.

Unless otherwise specified in the survey request, control surveys shall conform to second order (modified) accuracy standards as specified in the Caltrans "Survey Manual".

Additional standards for specific survey work may be included in the applicable request for survey. Such standards supplement the standards specified herein. If additional standards conflict with the standards specified herein, the "Survey Request's" standard shall govern.

The Resident Engineer and SBCTA will decide all questions which may arise as to the quality or acceptability of deliverables furnished and work performed for this contract. Any CONSULTANT employee who does not perform adequately will be replaced if directed by the SBCTA Construction Manager.

H. 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 CONSULTANT's personnel. On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CONSULTANT services will not be provided unless authorized by the SBCTA Construction 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 in advance.

I. LIMITATIONS TO AUTHORITY

CONSULTANT 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 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.

J. THIRD PARTY RELATIONSHIPS

This Contract is intended to provide unique services for a specific project. In the development of the Project, SBCTA has worked closely with various professional consultants, 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. CONSULTANT 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 Project, CONSULTANT may find occasion to meet with Caltrans, City or County representatives, the design engineer, Project consultants, 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, CONSULTANT shall not act on any suggestions, solicited or unsolicited, without obtaining specific direction from SBCTA. All oral and written communication with outside agencies or consultants 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.

K. CONSTRUCTION SITE SAFETY

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

1. CONSULTANT will conform to the safety provisions of the Caltrans Construction Manual.
2. CONSULTANT's field personnel will wear white hard hats with proper suspension, orange/yellow vests with reflective tape, sleeved shirt, long pants, and leather boots with ankle support and rubber soled shoes at all times while working in the field.
3. CONSULTANT will provide appropriate safety training for all CONSULTANT's personnel, including working on and near highways.
4. All safety equipment will be provided by CONSULTANT.

L. BASIS FOR SURVEY AND MONUMENT STAKING

SBCTA will designate the existing horizontal and vertical control monuments that are the basis of CONSULTANT performed surveys. SBCTA will provide the California Coordinate System values and/or elevation values for these monuments. CONSULTANT shall adjust CONSULTANT performed surveys to be the designated control monuments and the values.

Monuments established by CONSULTANT shall be marked by CONSULTANT with furnished disks, plugs, tags. In addition, CONSULTANT shall identify CONSULTANT established monuments by tagging or stamping the monuments with the license or registration number of CONSULTANT'S surveyor who is in "responsible charge" of the work.

M. PERSONNEL QUALIFICATIONS AND RESPONSIBILITIES

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. Again, all personnel and personnel assignments are subject to approval by SBCTA. While some areas of responsibility may overlap, as a guideline, CONSULTANT personnel assigned to the Project should have the following qualifications:

1. Project Manager

- a. A minimum of six (6) years' project management experience on similar construction projects is desired.
- b. Accessible to SBCTA at all times during normal working hours.
- c. A thorough understanding of Caltrans construction practices and procedures.
- d. A thorough understanding of Cal-OSHA practices and procedures.
- e. The Project Manager will assume the following functional responsibilities:
 - 1) Review, monitor, train, and provide general direction for CONSULTANT personnel.
 - 2) Assign personnel to projects on an as-needed basis.
 - 3) Administer personal leave.
 - 4) Prepare monthly reports for delivery to SBCTA.

2. Resident Engineer

- a. A minimum of eight (8) years' resident engineer experience on similar construction projects is desired.
- b. Licensed Professional Civil Engineer in the State of California.
- c. Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.
- d. Accessible to SBCTA at all times including weekends and holidays.
- e. Certified as a Qualified SWPPP Developer or Practitioner is desired.
- f. A thorough understanding of Cal-OSHA practices and procedures.
- g. A thorough understanding of American with Disability Act (ADA) and Caltrans ADA requirements. Completion of Caltrans Temporary Pedestrian Facilities training within the last 6 months.
- h. A thorough understanding of Caltrans field methods, practices, and construction office procedures. The Resident Engineer will assume the following functional responsibilities:

- 1) Monitor and provide daily direction to CONSULTANT Resident Engineers and inspection personnel.
- 2) Assign field personnel to specific project tasks.
- 3) Monitor and track Contractor progress.
- 4) Prepare daily, weekly and monthly reports as required.
- 5) Coordinate utility relocations with appropriate agencies and the utility inspector.
- 6) Act as prime field contact between various project Contractors and SBCTA's Construction Manager.

3. Assistant Resident Engineer

- a. A minimum of four (4) years' experience on similar construction projects is desired.
- b. Licensed Professional Civil Engineer in the State of California.
- c. Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.
- d. Accessible to SBCTA at all times including weekends and holidays.
- e. Certified as a Qualified SWPPP Developer or Practitioner is desired.
- f. A thorough understanding of Cal-OSHA practices and procedures.
- g. A thorough understanding of American with Disability Act (ADA) and Caltrans ADA requirements. Completion of Caltrans Temporary Pedestrian Facilities training within the last 6 months.
- h. Thorough understanding of Caltrans field methods, practices, and construction office procedures. The Assistant Resident Engineer shall act under the direction of the Resident Engineer and will assume the following functional responsibilities:
 - 1) Monitor and provide daily direction to CONSULTANT inspection personnel.
 - 2) Assign field personnel to specific project tasks.
 - 3) Monitor and track Contractor progress.
 - 4) Prepare daily, weekly and monthly reports as required.
 - 5) Coordinate utility relocations with appropriate agencies.

4. Lead Field Inspector

- a. A minimum of six (6) years' construction inspection experience in public works on similar projects or a four-year degree in the field of civil engineering, transportation and four years of similar construction experience is desired.
- b. A thorough understanding of Cal-OSHA practices and procedures.
- c. Knowledge of Caltrans construction practices, physical characteristics and properties of highway construction materials, and approved methods and equipment used in making physical tests of construction materials.
- d. Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.

- e. Ability to direct the efforts of subordinate inspectors.
- f. Ability to use an automatic level and transit for the purpose of verifying line and grade.
- g. Certified as a Qualified SWPPP Developer or Practitioner is desired.
- h. A thorough understanding of American with Disability Act (ADA) and Caltrans ADA requirements. Completion of Caltrans Temporary Pedestrian Facilities training within the last 6 months.
- i. Understanding of Caltrans field and construction office procedures. The Lead Field Inspector will assume the following functional responsibilities:
 - 1) Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of construction.
 - 2) Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.
 - 3) Coordinate field testing of materials to monitor compliance with Project specifications and Caltrans Quality Assurance Program.
 - 4) Maintain accurate and timely Project records. Perform quantity calculations for progress pay estimates.
 - 5) Perform analytical calculations such as basic earthwork, grading, profiles, and special staking procedures.
 - 6) Provide input for the redesign of facilities to fit existing field conditions.
 - 7) Monitor and track Contractor progress. Prepare daily, weekly, and monthly reports as required.

5. Field Inspector

- a. Two (2) years' construction inspection experience in public works on similar projects or a four-year degree in the field of civil transportation engineering is desired.
- b. A thorough understanding of Cal-OSHA practices and procedures.
- c. Knowledge of construction practices, physical characteristics and properties of construction materials, and approved methods and equipment used in making physical tests of construction materials.
- d. Ability to work independently. Ability to make minor decisions concerning construction work in progress and to solve field and office problems.
- e. Ability to use an automatic level and transit for the purpose of verifying line and grade.
- f. Certified as a Qualified SWPPP Developer or Practitioner is desired.
- g. A thorough understanding of American with Disability Act (ADA) and Caltrans ADA requirements. Completion of Caltrans Temporary Pedestrian Facilities training within the last 6 months.
- h. Understanding of Caltrans construction methods and practices. The Field Inspector will assume the following functional responsibilities:
 - 1) Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of project construction.

- 2) Assist in preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.
- 3) Coordinate field testing of materials to monitor compliance with Project specifications and Caltrans Quality Assurance Program.
- 4) Perform quantity calculations for progress pay estimates and maintain Project records.
- 5) Perform analytical calculations such as basic earthwork, grading, profiles, and special staking procedures.
- 6) Provide input for the redesign of facilities to fit existing field conditions.
- 7) Perform construction materials sampling.
- 8) Perform labor compliance interviews of the Contractors' personnel.

6. Structural Representative

- a. A minimum of six (6) years of bridge or structural construction inspection as related to major public works projects and a four-year degree in civil engineering is desired.
- b. A minimum of four (4) years as a Structural Representative on major public works projects.
- c. Licensed Professional Civil Engineer in the State of California.
- d. Knowledge of stress analysis, structural mechanics, and strength of materials.
- e. A thorough understanding of Cal-OSHA practices and procedures.
- f. Knowledge of Caltrans and Greenbook construction practices and the physical characteristics and properties of various bridge construction materials including concrete.
- g. Experience in the following areas: foundations, pile driving, concrete prestressing, bridge deck construction, cast-in-place wall construction, falsework, and shoring.
- h. 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.
- i. Ability to direct the efforts of subordinate inspectors.
- j. Ability to use an automatic level and transit for the purpose of verifying line and grade.
- k. Thorough understanding of Caltrans field methods, practices, and construction office procedures. The Structural Representative shall assume the following functional responsibilities:
 - 1) Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of structural construction such as bridges, foundations, walls, falsework, shoring, and drainage structures.
 - 2) Make grade, alignment, quantity, falsework, and shoring calculations.
 - 3) 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.

- 4) Monitor and track Contractor progress. Prepare daily, weekly, and monthly reports as required.
- 5) Coordinate with Resident Engineer, as well as the Construction Staking and Material Testing consultants.
- 6) Direct the daily activities of subordinate inspectors.

7. Structural Inspector

- a. A minimum of four (4) years of bridge design or structural construction inspection as related to Caltrans or major public works projects and a four-year degree in civil or structural engineering is desired.
- b. Knowledge of stress analysis, structural mechanics, and strength of materials.
- c. A thorough understanding of Cal-OSHA practices and procedures.
- d. Knowledge of construction practices and the physical characteristics and properties of various highway bridge construction materials including concrete.
- e. Experience in one or more of the following areas: pile driving, concrete prestressing, bridge deck construction, retaining wall construction, falsework, and shoring.
- f. Ability to work independently and make minor decisions concerning construction work in progress and to solve field and office problems.
- g. Ability to use an automatic level and transit for the purpose of verifying line and grade.
- h. Understanding of Caltrans construction methods and practices. The Structural Inspector will assume the following functional responsibilities:
 - 1) Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of structural construction such as bridges, foundation, walls, falsework, shoring, and drainage structures.
 - 2) Make grade, alignment, quantity, falsework, and shoring calculations.
 - 3) Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.
 - 4) Sampling and testing of construction materials to monitor compliance with contract specifications and Caltrans Quality Assurance Program.

8. Office Engineer

- a. A minimum of two (2) years' experience as an office engineer on similar construction projects is desired.
- b. Knowledge of Caltrans Office of Highway Construction forms used to administer construction projects.
- c. Knowledge of Caltrans system of document organization.
- d. Knowledge of construction records and accounting procedures.
- e. Knowledge of documentation, procedures, and reporting for federally funded projects.

- f. Knowledge of laws and regulations governing the payment of prevailing wages.
- g. The Office Engineer will assume the following functional responsibilities:
 - 1) Process monthly progress pay estimates, monthly status reports, extra work reports, and weekly statements of working days.
 - 2) Prepare and process contract change orders.
 - 3) Monitor construction budget and schedule.
 - 4) Prepare, maintain, and/or file project documents including labor and equipment records, correspondence, memoranda, meeting minutes, claims, personnel records, labor compliance reports, and daily, weekly, and monthly reports.
 - 5) Perform routine calculations and checking of quantities.
 - 6) Coordinate all office activities and functions with SBCTA representatives.

9. Materials Testing/Source Inspection Project Manager

- a. A minimum of four (4) years' project management experience on a similar highway/bridge construction project is desired.
- b. Licensed Civil Engineer in the State of California.
- c. Ability to use typical computer programs including word processing and spreadsheets.
- d. The Materials Testing/Source Inspection Project Manager will assume the following functional responsibilities:
 - 1) Review, monitor, train, and provide general direction for CONSULTANT's laboratory, field and source inspection personnel.
 - 2) Assign personnel to projects on an as-needed basis in coordination with the Resident Engineer.
 - 3) Administer personal leave, subject to approval of the Resident Engineer.
 - 4) Prepare monthly reports for delivery to the Resident Engineer.
 - 5) Provide direction, administration, and responsibility for Materials Certification per Caltrans Construction Manual, Section 8-01.
 - 6) Assist SBCTA and Resident Engineer in preparing the project specific Source Inspection Quality Management Plan (SIQMP) for Caltrans review and approval. (Reference Caltrans "Source Inspection Quality Management Plan (SIQMP Outline dated 04/17/12).
 - 7) Provide direction, administration, and responsibility for implementation of the approved SIQMP per Caltrans Construction Procedures Directive (CPD) 08-5 and FHWA Title 23 requirements.

Material testing/source inspection personnel will be certified by a California Registered Civil Engineer as being experienced and competent in the test procedures required for the work involved (and possess a current certificate of proficiency (Form MR-0111) in accordance with Quality Assurance Program Manual (Section 3-5). Independent certification of Caltrans test procedures may be performed at the discretion of the SBCTA Construction Manager.

10. Materials Technicians

CONSULTANT personnel provided under this contract will have a variety of skills and experience appropriate for the level of tasks to be assigned. Field personnel shall be certified by Caltrans and should have a minimum of two (2) years' experience in conducting material sampling and testing of the type required for the projects involved and possess the following additional capabilities:

- a. Have the ability to establish specific locations for appropriate tests when construction contract administration personnel are not available.
- b. Be familiar with construction practices and be fully aware of construction activities at the Project site.
- c. Have knowledge of and comply with safety and health regulations and requirements applicable to the Project.
- d. Specific qualifications for technicians are as follows:

1) CONSTRUCTION TECHNICIAN I

- a) Performs a variety of semi-skilled activities. Examples of duties assigned to this classification are:
 - i. Conducting quality control tests such as soil densities, sieve analysis tests, operation scales and inspecting spread operations.
 - ii. Sampling and transporting produced construction materials from point of application or production to testing laboratory.
- b) Knowledge and Skills Required
 - i. Knowledge of tools, equipment and vehicles utilized in construction.
 - ii. Knowledge of standard equipment and materials used for the sampling and testing of construction material.
 - iii. Knowledge of basic mathematics used in the computation of a variety of construction items.
 - iv. Knowledge of record keeping, preparing documents and reports.

2) CONSTRUCTION TECHNICIAN II

- a) Performs a variety of skilled activities. Examples of duties assigned to this classification are:
- i. Inspecting minor construction items, sampling and inspection of steel reinforcement, sampling and inspection of concrete placing operation.
 - ii. Collect and analyze soil samples of construction materials to determine compaction and moisture content.
 - iii. Inspection and sampling of all phases of asphalt concrete and PCC paving operation, including plant inspection.
 - iv. Confers with construction engineers and contractors regarding construction in progress and conformance to specifications and construction plans.
 - v. Answers questions and resolves problems.
 - vi. Inspects construction in progress to ensure conformance with specification, agreements, and established requirements.
 - vii. Keeps a daily diary of work progress.
 - viii. Prepares reports on all field inspections and submits project quantities on a daily basis.
 - ix. Keeps accurate documentation for force accounts and possible claims.
- b) Knowledge and Skills Required
- i. All knowledge and skills required of lower classification.
 - ii. Knowledge of currently accepted methods, procedures and techniques used in highway construction inspection, survey, materials testing, and quality control equipment.
 - iii. Skill in interpersonal relations as applied to contact with contractors, representatives of other governmental jurisdictions, and other SBCTA/Caltrans staff.

3) CONSTRUCTION TECHNICIAN III

- a) Exercises considerable independent judgment within general Caltrans standards and guidelines. Examples of duties assigned to this classification are:
- i. Inspect Project construction on an ongoing basis to assure compliance with contract and in accordance with State and local standards.
 - ii. Perform a variety of structural material tests and inspections.
 - iii. Reviews construction plans and verifies that these are in accordance with designated specifications and other requirements.
 - iv. Participates in the preparation of completed work estimates, to calculate compensation due contractor.
 - v. Examines and verifies numeric data and material specifications on project cost source documents, utilizing geometry and trigonometry calculations.
 - vi. Supervises all work activities involved in construction projects, laboratory, and quality control work.

vii. Recommends approval of proposed Project changes.

b) Knowledge and Skills Required

- i. All knowledge and skills required of lower classifications.
- ii. Knowledge of the principles and practices of Civil Engineering as applied to the construction of state highways.
- iii. Skill in analyzing and evaluating a wide variety of highly technical engineering data, including construction plans, field survey and quality control documents.
- iv. Skill in interpreting and implementing Caltrans standards, policies, procedures and regulations.
- v. Skill in interpersonal relations, as applied to contacts with contractors, representatives of other governmental jurisdictions, and other SBCTA/Caltrans staff.

11. Construction Surveying Project Manager

- a. A minimum of four (4) years' project management experience on similar construction projects is desired.
- b. Licensed Surveyor or pre-January 1, 1982 Registered Professional Engineer in the State of California.
- c. Accessible to the Resident Engineer and SBCTA at all times during normal working hours as specified in this Scope of Services.
- d. Under the direction of the Resident Engineer, the Survey Project Manager will be responsible for:
 - 1) Review, monitor, train, and provide general direction for CONSULTANT survey personnel.
 - 2) Assign personnel to projects on an as-needed basis.
 - 3) Administer personal leave, subject to approval of the Resident Engineer.
 - 4) Prepare monthly reports for delivery to the Resident Engineer.

12. Field Party Chief(s)

- a. The person(s) holding the position of Party Chief shall meet at least one of the following licensing requirements:
 - 1) A licensed Land Surveyor in the State of California.
 - 2) A pre-January 1, 1982, Registered Professional Civil Engineer in the State of California.
 - 3) An experienced surveyor who serves as chief under the direction or supervision of a person who is a licensed Land Surveyor or pre-January 1, 1982 Registered Professional Civil Engineer in the State of California. The direction or supervision shall place the supervisor in "responsible charge" of the work. "Responsible Charge" is defined in Chapter 15 of the Business and Professions Code (the Land Surveyor's Act) and Title

16, Chapter 5, of the California Administrative Code (regulations adopted by the Board of Registration for Professional Engineers and Land Surveyors).

- b. The Party Chief(s) should have a minimum two (2) years' survey experience on similar construction projects and possess the following additional capabilities:
 - 1) Thorough knowledge of construction survey practices and the ability to read and interpret plans and specifications.
 - 2) Ability to make effective decisions concerning field problems and work in progress.
 - 3) Familiarity with typical coordinate geometry computer programs.
 - 4) Familiarity with safety requirements for surveying near traffic.

- c. The Party Chief(s) will assume the following responsibilities:
 - 1) Perform construction staking services for Project construction.
 - 2) Administer day to day activities for the survey party.
 - 3) Perform analytical survey calculations for items such as grading, horizontal and vertical control, right of way, and minor in-field design.
 - 4) Maintain continuous communication with the Resident Engineer, field personnel, and construction administration staff.

13. Survey Crews

- a. Qualifications for survey crew members should include the following:
 - 1) A minimum of one (1) year of survey experience on similar construction projects is desired.
 - 2) Fundamental knowledge of construction survey practices and the ability to read and interpret plans and specifications.
 - 3) Ability to assist Party Chiefs and office personnel in all required surveying work.
 - 4) One survey crew member must have the ability to assume temporary leadership of the survey party in the absence of the Party Chief.

- b. Under the direction of the Resident Engineer and the Party Chief, the survey crew members will assume the following responsibilities:
 - 1) Perform basic calculations to support construction staking.
 - 2) Maintain continuous communication with Party Chiefs and office personnel.

END OF SCOPE OF WORK

Minute Action

AGENDA ITEM: 4

Date: *September 13, 2024*

Subject:

US 395 Phase 2 Project Preview of the Hearings to Consider Resolutions of Necessity for Property interests within the Cities of Hesperia and Victorville

Recommendation:

That the Mountain/Desert Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Conduct public hearings to consider condemnation of real property required for the US 395 Phase 2 Project in the Cities of Hesperia and Victorville.

B. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-010 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: The Jennifer Lichuan Ko Family Trust (Assessor's Parcel Number 3136-261-06). The resolution must be approved by at least a two-thirds majority.

C. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-013 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: The Camp and Julia Second Family Limited Partnership (Assessor's Parcel Number 3136-251-02). The resolution must be approved by at least a two-thirds majority.

D. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-014 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: Shahin Trust (Assessor's Parcel Number 3134-121-42). The resolution must be approved by at least a two-thirds majority.

E. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-015 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: 395 Properties 26, LLC (Assessor's Parcel Number 3096-361-04). The resolution must be approved by at least a two-thirds majority.

F. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-016 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: Lighthouse Petroleum-Victorville, LLC (Assessor's Parcel Number 3071-331-11). The resolution must be approved by at least a two-thirds majority.

G. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-017 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: City of Victorville (Assessor's Parcel Number 3096-361-10). The resolution must be approved by at least a two-thirds majority.

Entity: San Bernardino County Transportation Authority

Mountain-Desert Committee Agenda Item

September 13, 2024

Page 2

H. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-018 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: 395, LLC (Assessor's Parcel Number 3064-591-01 and 3064-591-03). The resolution must be approved by at least a two-thirds majority.

I. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-019 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: Jagroop Dhillon (Assessor's Parcel Number 3064-381-07). The resolution must be approved by at least a two-thirds majority.

J. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-020 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: Hanna Trust (Assessor's Parcel Number 3064-381-05). The resolution must be approved by at least a two-thirds majority.

K. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-021 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: The S & P Family Trust (Assessor's Parcel Number 3064-381-29). The resolution must be approved by at least a two-thirds majority.

L. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-022 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: Varinder Paul Sangha (Assessor's Parcel Number 3064-371-12). The resolution must be approved by at least a two-thirds majority.

M. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-023 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: The Hazboon Family Trust (Assessor's Parcel Number 3064-371-11). The resolution must be approved by at least a two-thirds majority.

N. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-024 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: JM Built Corporation (Assessor's Parcel Number 3064-371-08). The resolution must be approved by at least a two-thirds majority.

O. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-025 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: Daniel Lindsey Song (Assessor's Parcel Number 3064-371-06). The resolution must be approved by at least a two-thirds majority.

P. Upon completion of a public hearing, that the Board adopt Resolution of Necessity No. 25-026 authorizing and directing General Counsel, or her designee, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property from: MPNR Properties, LLC/Farsai's, LLC (Assessor's Parcel Number 3039-361-09). The resolution must be approved by at least a two-thirds majority.

San Bernardino County Transportation Authority

Background:

San Bernardino County Transportation Authority (SBCTA) is proceeding with the delivery of the US 395 Phase 2 Project (Project). The acquisition of temporary construction easements (TCE), permanent easements, and partial fee areas from 52 properties is required to construct and operate the Project.

On September 8, 2022, SBCTA and California Department of Transportation (Caltrans) executed Cooperative Agreement No. 22-1002816 for the final design and Right-of-Way (ROW) phase of this Project. Under the cooperative agreement, SBCTA is to lead the acquisition of ROW needed to construct and operate the Project.

In an effort to maintain the Project schedule, it is necessary to comply with the statutorily prescribed process for eminent domain and conduct hearings for a Resolution of Necessity for each property while negotiations continue. Therefore, the purpose of this agenda item is to present information regarding the public interest and necessity for the Project and the property rights required for Project implementation. Although the adoption of Resolutions of Necessity is recommended for the subject properties in order to maintain the Project schedule and avoid delay costs, SBCTA's acquisition agents will continue to negotiate with the property owners in an effort to acquire the property interests through a voluntary purchase and avoid litigation.

The owners of the subject properties are:

- The Jennifer Lichuan Ko Family Trust
- The Camp and Julia Second Family Limited Partnership
- Shahin Trust
- 395 Properties 26, LLC
- Lighthouse Petroleum-Victorville, LLC
- City of Victorville
- 395, LLC
- Jagroop Dhillon
- Hanna Trust
- The S&P Family Trust
- Varinder Paul Sangha
- The Hazboon Family Trust
- JM Built Corporation
- Daniel Lindsey Song
- MPNR Properties, LLC/Farsai's, LLC

Support for the Resolutions of Necessity

SBCTA is authorized to acquire property by eminent domain pursuant to the California Public Utilities Code Sections 130220.5 and 130809(b)(4). Eminent domain will allow SBCTA to obtain legal rights to the properties needed for the Project if a negotiated sale cannot be reached. A Resolution of Necessity is the first step in the eminent domain process. Since the process takes several months, it is necessary to start this process now to ensure that possession of the property is obtained in time to meet the scheduled delivery and to avoid costly ROW delays.

In order to adopt the Resolutions of Necessity, SBCTA must make the four findings discussed below for each of the properties. The issue of the amount of just compensation for these properties is not addressed by these Resolutions of Necessity and is not to be considered at the hearings. The four necessary findings are:

San Bernardino County Transportation Authority

1. The public interest and necessity require the Project.

The Project is located in the Cities of Hesperia and Victorville of San Bernardino County. The Project will widen US 395 from two to four lanes with a raised median, turning lanes, and eight-foot shoulders between Interstate 15 and Palmdale Road (SR 18). The proposed improvements will address a critical freight bottleneck in the Victor Valley region. US 395 is designated as a “Priority Interregional Highway” in the Caltrans 2021 Interregional Transportation Strategic Plan (ITSP). US 395 is widely recognized as a critical linkage for goods movement, supporting the economies of multiple inland counties and an important agricultural route to and from the Central Valley.

The purpose of the Project is to:

- Improve the efficiency and reliability of regional freight flows by closing a critical gap on US 395.
- Improve safety for all users, both motorized and non-motorized.
- Transition US 395 into a more community-centric facility that better accommodates bicycle, pedestrian, and transit travel.

If no improvements are made to US 395, the existing and future traffic congestion will not be mitigated.

2. The Project is planned and located in the manner that will be most compatible with the greatest public good and least private injury.

During the environmental phase of the Project, three alternatives were studied. The Project Development Team (PDT) selected this alternative to construct as it included the least ROW impacts to the community and relieves congestion, enhancing the operational efficiency and improving access to local services. The proposed design minimizes the property required for the Project, but still requires partial acquisitions, permanent utility easements, permanent maintenance easements and the relinquishment of access rights to the highway in some areas. During the design phase, considerations had been taken that would provide access to adjacent properties where access to those properties would be affected by the Project. Epic Land Solutions, Inc. have also had numerous communications with the property owners about their needs in order to design the Project in a manner that causes the least private injury while accomplishing the greatest public good through construction of the Project.

3. Each property sought to be acquired is necessary for the Project.

While some of the Project is being constructed within existing ROW, some acquisition from the subject properties is needed to allow existing roadbed widening, retaining wall, drainage systems, and required utility relocations. For the subject properties, the following ROW interests are required:

- **The Jennifer Lichuan Ko Family Trust:** A Fee Acquisition and a Permanent Slope Easement are needed for the construction of the Project improvements.
- **The Camp and Julia Second Family Limited Partnership:** A Fee Acquisition is needed for the construction of the Project improvements.
- **Shahin Trust:** A Fee Acquisition is needed for the construction of the Project improvements.

- **395 Properties 26, LLC:** A Permanent Slope Easement is needed for the construction of the Project improvements.
- **Lighthouse Petroleum-Victorville, LLC:** A Permanent Drainage Easement is needed for the construction of the Project improvements.
- **City of Victorville:** A Fee Acquisition and a TCE are needed for the construction of the Project improvements.
- **395, LLC:** Two TCEs are needed for the construction of the Project improvements.
- **Jagroop Dhillon:** A Fee Acquisition and a Permanent Slope Easement are needed for the construction of the Project improvements.
- **Hanna Trust:** A Fee Acquisition and a Permanent Slope Easement are needed for the construction of the Project improvements.
- **The S&P Family Trust:** A Fee Acquisition and a Permanent Slope Easement are needed for the construction of the Project improvements.
- **Varinder Paul Sangha:** A Fee Acquisition and a Permanent Slope Easement are needed for the construction of the Project improvements.
- **The Hazboon Family Trust:** A Fee Acquisition, a Permanent Slope Easement, and a TCE are needed for the construction of the Project improvements.
- **JM Built Corporation:** A Fee Acquisition is needed for the construction of the Project improvements.
- **Daniel Lindsey Song:** A Fee Acquisition is needed for the construction of the Project improvements.
- **MPNR Properties, LLC/Farsai's, LLC:** A TCE is needed for the construction of the Project improvements.

4. Offers required by Section 7267.2 of the Government Code have been made to the property owners.

The properties listed below were appraised and offers for the full amount of the appraisals were made to the owner or owners of record in accordance with Section 7267.2 of the Government Code.

- The offer for the The Jennifer Lichuan Ko Family Trust property was sent on August 5, 2024.
- The offer for the The Camp and Julia Second Family Limited Partnership property was sent on August 5, 2024.
- The offer for the Shahin Trust property was sent on August 5, 2024.
- The offer for the 395 Properties 26, LLC property was sent on August 5, 2024.
- The offer for the Lighthouse Petroleum-Victorville, LLC property was sent on August 5, 2024.
- The offer for the City of Victorville property was sent on August 5, 2024.

Mountain-Desert Committee Agenda Item

September 13, 2024

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- The offer for the 395, LLC property was sent on July 24, 2024.
- The offer for the Jagroop Dhillon property was sent on August 1, 2024.
- The offer for the Hanna Trust property was sent on August 5, 2024.
- The offer for the The S&P Family Trust property was sent on August 5, 2024.
- The offer for the Varinder Paul Sangha property was sent on August 5, 2024.
- The offer for the The Hazboon Family Trust property was sent on August 5, 2024.
- The offer for the JM Built Corporation property was sent on August 5, 2024.
- The offer for the Daniel Lindsey Song property was sent on August 5, 2024.
- The offer for the MPNR Properties, LLC/Farsai's, LLC property was sent on August 5, 2024.

Financial Impact:

The US 395 Phase 2 Project is included in the adopted Budget for Fiscal Year 2024/2025 and funded with Surface Transportation Program Funds in Program 40, Project Delivery.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel has reviewed this item. The RONs were prepared and reviewed by outside ROW Counsel.

Responsible Staff:

Sal Chavez, Project Delivery Manager

Approved
Mountain-Desert Committee
Date: September 13, 2024

Witnessed By:

US 395 Phase 2 Project

DRY RUN RESOLUTION OF NECESSITY FOR PROJECT RIGHT-OF-WAY

Presenter: Sal Chavez
Project Delivery Manager

Mountain/Desert Policy Committee
September 13, 2024



San Bernardino County
Transportation Authority

1

SBCTA IS REQUESTED TO MAKE THE FOLLOWING FINDINGS:

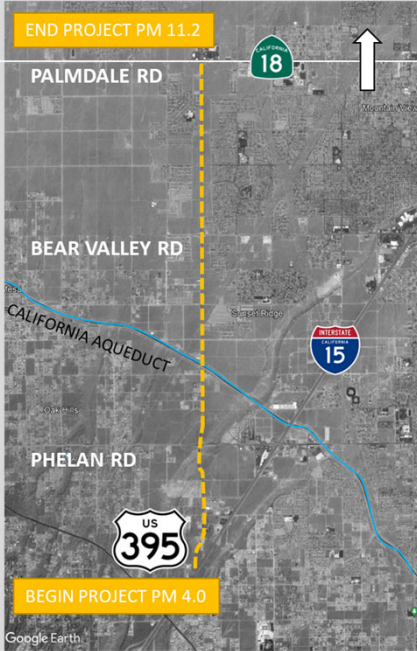
1. The public interest and necessity require the proposed project
2. The project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury
3. The real property to be acquired is necessary for the project
4. The offer of just compensation has been made to the property owner



SBCTA Request

2

Attachment: US 395 Phase 2 Dry Run RONs Presentation September MDC (10784 : US 395 Phase 2 Dry Run RONS)



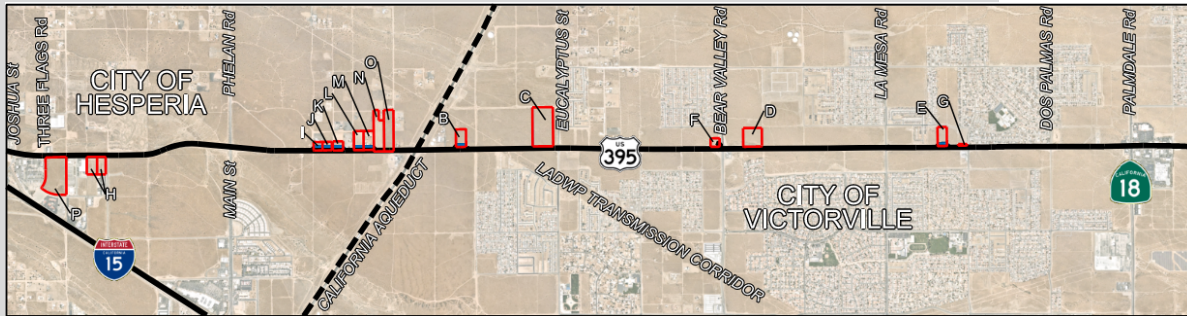
Project Overview

- Widen US 395 from 2 to 4 lanes with a raised median and eight-foot shoulders between I-15 and Palmdale Road (SR 18).
- New southbound bridge at California Aqueduct



US 395 Phase 2 Project

3



ID	APN	OWNER
B	3136-261-06	THE JENNIFER LICHUAN KO FAMILY TRUST
C	3136-251-02	THE CAMP AND JULIA SECOND FAMILY LIMITED PARTNERSHIP
D	3134-121-42	SHAHIN TRUST
E	3096-361-04	395 PROPERTIES 26, LLC
F	3071-331-11	LIGHTHOUSE PETROLEUM-VICTORVILLE, LLC
G	3096-361-10	CITY OF VICTORVILLE
H	3064-591-03, 3064-591-01	395, LLC

ID	APN	OWNER
I	3064-381-07	JAGROOP DHILLON
J	3064-381-05	HANNA TRUST
K	3064-381-29	THE S&P FAMILY TRUST
L	3064-371-12	VARINDER PAUL SANGHA
M	3064-371-11	THE HAZBOON FAMILY TRUST
N	3064-371-08	JM BUILT CORPORATION
O	3064-371-06	DANIEL LINDSEY SONG
P	3039-361-09	MPNR PROPERTIES, LLC/FARSAI'S LLC



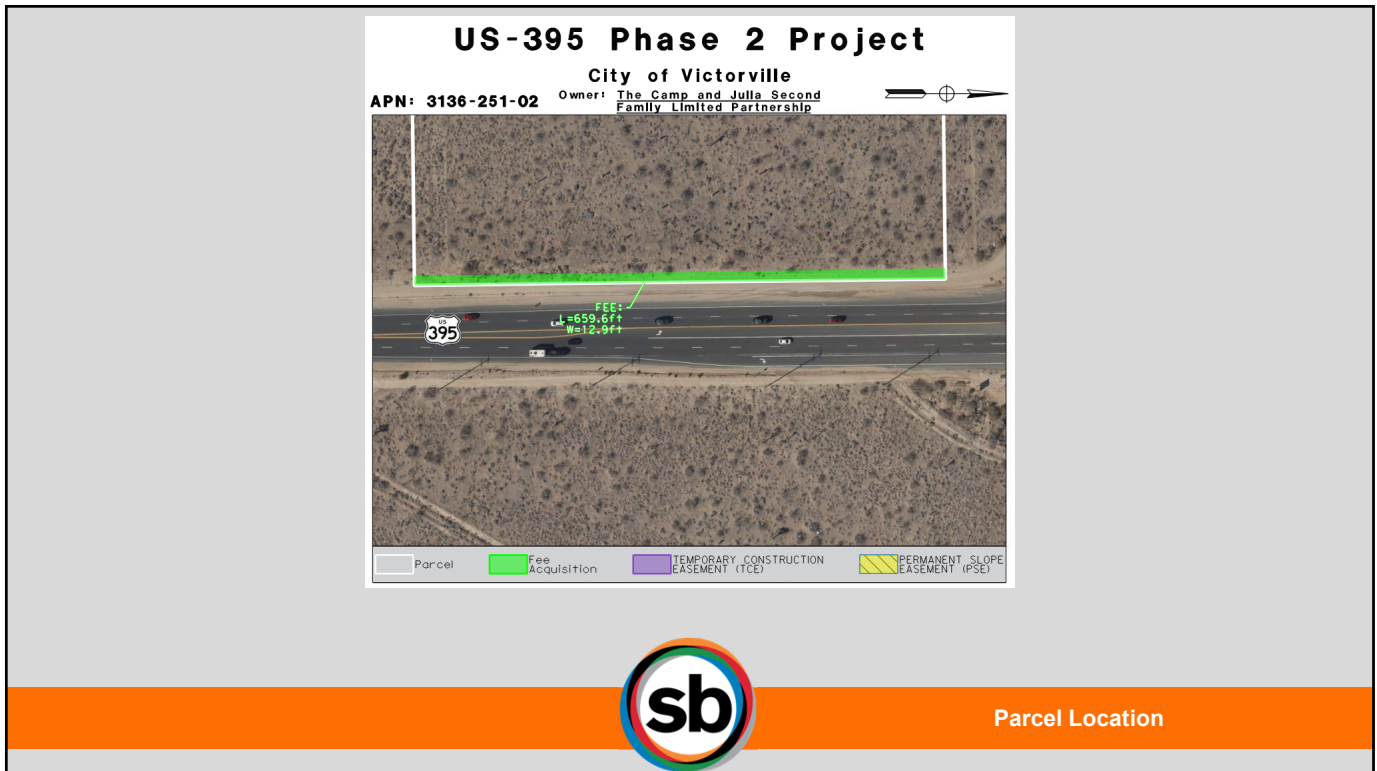
Parcel Locations

4

Attachment: US 395 Phase 2 Dry Run RONs Presentation September MDC (10784 : US 395 Phase 2 Dry Run RONs)



5




6

Attachment: US 395 Phase 2 Dry Run RONS Presentation September MDC (10784 : US 395 Phase 2 Dry Run RONS)

US-395 Phase 2 Project
City of Victorville


APN: 3134-121-42 Owner: Shahin_Trust


Parcel Location

7

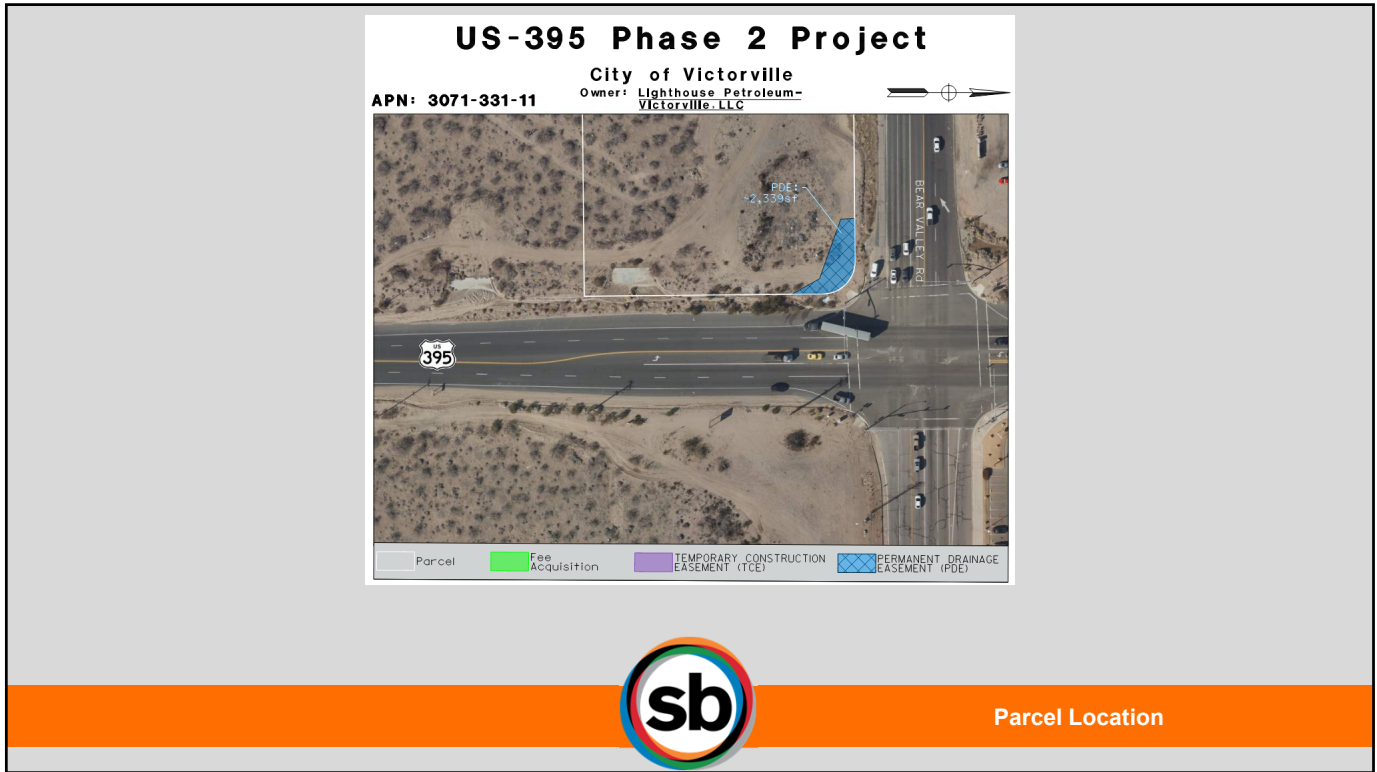
US-395 Phase 2 Project
City of Victorville

APN: 3096-361-04 Owner: 395 Properties 26, LLC


Parcel Location

8

Attachment: US 395 Phase 2 Dry Run RONS Presentation September MDC (10784 : US 395 Phase 2 Dry Run RONS)



9

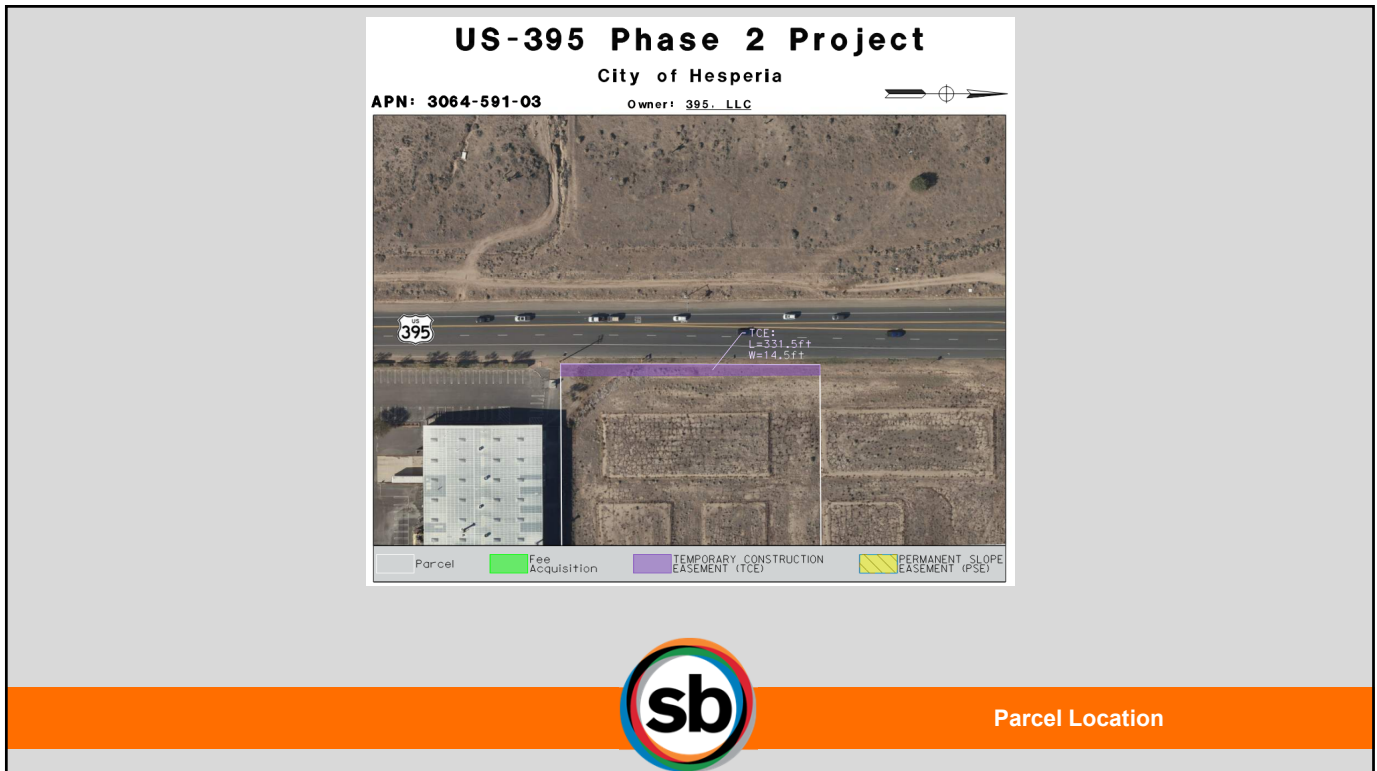


10

Attachment: US 395 Phase 2 Dry Run RONs Presentation September MDC (10784 : US 395 Phase 2 Dry Run RONs)



11



12

Attachment: US 395 Phase 2 Dry Run RONs Presentation September MDC (10784 : US 395 Phase 2 Dry Run RONs)

US-395 Phase 2 Project

City of Hesperia

APN: 3064-381-07 Owner: Jagroop Dhillon

sb
Parcel Location

13

US-395 Phase 2 Project

City of Hesperia

APN: 3064-381-05 Owner: Hanna Trust

sb
Parcel Location

14

Attachment: US 395 Phase 2 Dry Run RONs Presentation September MDC (10784 : US 395 Phase 2 Dry Run RONS)

US-395 Phase 2 Project
City of Hesperia

APN: 3064-381-29 Owner: The S&P Family Trust

Parcel
 Fee Acquisition
 TEMPORARY CONSTRUCTION EASEMENT (TCE)
 PERMANENT SLOPE EASEMENT (PSE)

Parcel Location

15

US-395 Phase 2 Project
City of Hesperia

APN: 3064-371-12 Owner: Varinder Paul Sangha

Parcel
 Fee Acquisition
 TEMPORARY CONSTRUCTION EASEMENT (TCE)
 PERMANENT SLOPE EASEMENT (PSE)

Parcel Location

16

Attachment: US 395 Phase 2 Dry Run RONs Presentation September MDC (10784 : US 395 Phase 2 Dry Run RONs)

US-395 Phase 2 Project

City of Hesperia

APN: 3064-371-11 Owner: The Hazboon Family Trust

Parcel
 Fee Acquisition
 TEMPORARY CONSTRUCTION EASEMENT (TCE)
 PERMANENT SLOPE EASEMENT (PSE)

Parcel Location

17

US-395 Phase 2 Project

City of Hesperia

APN: 3064-371-08 Owner: JM Buil Corporation

Parcel
 Fee Acquisition
 TEMPORARY CONSTRUCTION EASEMENT (TCE)
 PERMANENT SLOPE EASEMENT (PSE)

Parcel Location


18

Attachment: US 395 Phase 2 Dry Run RONs Presentation September MDC (10784 : US 395 Phase 2 Dry Run RONs)

US-395 Phase 2 Project
City of Hesperia

APN: 3064-371-06 Owner: DanielLindsey_Song

Parcel Fee Acquisition TEMPORARY CONSTRUCTION EASEMENT (TCE) PERMANENT SLOPE EASEMENT (PSE)




Parcel Location

19

US-395 Phase 2 Project
City of Hesperia

APN: 3030-361-09 Owner: MPNR Properties, LLC / Farsal's LLC

Parcel Fee Acquisition TEMPORARY CONSTRUCTION EASEMENT (TCE) PERMANENT SLOPE EASEMENT (PSE)




Parcel Location

20

Attachment: US 395 Phase 2 Dry Run RONs Presentation September MDC (10784 : US 395 Phase 2 Dry Run RONs)

No.	Ownership	Date of First Contact	Mailing	In Person Meetings	Phone Contacts	E-Mails	Attorney Contacts	Unsuccessful Contacts*	Total
B	The Jennifer Lichuan Ko Family Trust	3/22/2024	3	0	3	4	0	5	15
C	The Camp and Julia Second Family Limited Partnership	3/22/2024	2	0	2	10	0	0	14
D	Shahin Trust	3/22/2024	2	0	3	6	0	4	15
E	395 Properties 26, LLC	3/22/2024	2	0	3	2	0	0	7
F	Lighthouse Petroleum-Victorville, LLC	3/22/2024	2	0	2	3	0	1	8
G	City of Victorville	3/22/2024	2	0	3	3	0	0	8
H	395 LLC	3/22/2024	2	1	2	7	0	1	13
I	Dhillon, Jagroop	3/22/2024	2	1	5	0	0	1	9
J	Hanna Trust	3/22/2024	2	1	3	0	0	0	6
K	The S & P Family Trust	3/22/2024	2	0	2	2	0	0	6
L	Varinder Paul Sangha	3/22/2024	2	0	2	3	0	1	8
M	The Hazboon Family Trust	3/22/2024	2	0	1	0	0	2	5
N	JM Built Corporation	3/22/2024	2	1	7	2	0	0	12
O	Daniel Lindsey Song	3/22/2024	2	0	2	7	0	0	11
P	MPNR Properties, LLC/Farsai's LLC	3/22/2024	2	0	1	5	0	0	8

*Property visit, phone call, and/or email with no response Communications as of 8/31/2024


Communication Summary

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Item	Ownership	Offer Date
B	The Jennifer Lichuan Ko Family Trust	8/5/2024
C	The Camp and Julia Second Family Limited Partnership	8/5/2024
D	Shahin Trust	8/5/2024
E	395 Properties 26 LLC	8/5/2024
F	Lighthouse Petroleum-Victorville, LLC	8/5/2024
G	City of Victorville	8/5/2024
H	395 LLC	7/24/2024
I	Dhillon, Jagroop	8/1/2024
J	Hanna Trust	8/5/2024
K	The S & P Family Trust	8/5/2024
L	Varinder Paul Sangha	8/5/2024
M	The Hazboon Family Trust	8/5/2024
N	JM Built Corporation	8/5/2024
O	Daniel Lindsey Song	8/5/2024
P	MPNR Properties, LLC/Farsai's LLC	8/5/2024


Offer of Just Compensation

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Attachment: US 395 Phase 2 Dry Run RONs Presentation September MDC (10784 : US 395 Phase 2 Dry Run RONs)

**SBCTA ADOPT A RESOLUTION OF NECESSITY
BASED ON THE FOLLOWING FINDINGS:**

1. The public interest and necessity require the proposed project
2. The project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury
3. The real property to be acquired is necessary for the project
4. The offer of just compensation has been made to the property owner



Staff Recommendation

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THANK YOU



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Attachment: US 395 Phase 2 Dry Run RONs Presentation September MDC (10784 : US 395 Phase 2 Dry Run RONS)

Additional Information

MOUNTAIN/DESERT POLICY COMMITTEE ATTENDANCE RECORD – 2024

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Daniel Ramos City of Adelanto		X	X									
Art Bishop Town of Apple Valley		X	X			X						
Carmen Hernandez City of Barstow		X	X			X						
Rick Herrick City of Big Bear Lake												
Rebekah Swanson City of Hesperia		X	X			X						
Janet Jernigan City of Needles		X										
Joel Klink City of Twentynine Palms		X	X									
Debra Jones City of Victorville		X	X			X						
Rick Denison Town of Yucca Valley		X	X			X						
Paul Cook County of San Bernardino		X	X			X						
Dawn Rowe County of San Bernardino						X						

Communication: Attendance (Additional Information)

X = Member attended meeting * = Alternate member attended meeting Empty box = Member did not attend meeting Crossed out box = Not a Committee Member at the time
 Shaded box = No meeting

This list provides information on acronyms commonly used by transportation planning professionals. This information is provided in an effort to assist Board Members and partners as they participate in deliberations at Board meetings. While a complete list of all acronyms which may arise at any given time is not possible, this list attempts to provide the most commonly-used terms. Staff makes every effort to minimize use of acronyms to ensure good communication and understanding of complex transportation processes.

AB	Assembly Bill
ACE	Alameda Corridor East
ACT	Association for Commuter Transportation
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
APTA	American Public Transportation Association
AQMP	Air Quality Management Plan
ARRA	American Recovery and Reinvestment Act
ATMIS	Advanced Transportation Management Information Systems
BAT	Barstow Area Transit
CALACT	California Association for Coordination Transportation
CALCOG	California Association of Councils of Governments
CALSAFE	California Committee for Service Authorities for Freeway Emergencies
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
CMAQ	Congestion Mitigation and Air Quality
CMIA	Corridor Mobility Improvement Account
CMP	Congestion Management Program
CNG	Compressed Natural Gas
COG	Council of Governments
CPUC	California Public Utilities Commission
CSAC	California State Association of Counties
CTA	California Transit Association
CTC	California Transportation Commission
CTC	County Transportation Commission
CTP	Comprehensive Transportation Plan
DBE	Disadvantaged Business Enterprise
DEMO	Federal Demonstration Funds
DOT	Department of Transportation
EA	Environmental Assessment
E&D	Elderly and Disabled
E&H	Elderly and Handicapped
EIR	Environmental Impact Report (California)
EIS	Environmental Impact Statement (Federal)
EPA	Environmental Protection Agency
FHWA	Federal Highway Administration
FSP	Freeway Service Patrol
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
FTIP	Federal Transportation Improvement Program
GFOA	Government Finance Officers Association
GIS	Geographic Information Systems
HOV	High-Occupancy Vehicle
ICTC	Interstate Clean Transportation Corridor
IEEP	Inland Empire Economic Partnership
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
IIP/ITIP	Interregional Transportation Improvement Program
ITS	Intelligent Transportation Systems
IVDA	Inland Valley Development Agency
JARC	Job Access Reverse Commute
LACMTA	Los Angeles County Metropolitan Transportation Authority
LNG	Liquefied Natural Gas
LTF	Local Transportation Funds

Acronym List

MAGLEV	Magnetic Levitation
MARTA	Mountain Area Regional Transportation Authority
MBTA	Morongo Basin Transit Authority
MDAB	Mojave Desert Air Basin
MDAQMD	Mojave Desert Air Quality Management District
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MSRC	Mobile Source Air Pollution Reduction Review Committee
NAT	Needles Area Transit
NEPA	National Environmental Policy Act
OA	Obligation Authority
OCTA	Orange County Transportation Authority
PA&ED	Project Approval and Environmental Document
PASTACC	Public and Specialized Transportation Advisory and Coordinating Council
PDT	Project Development Team
PNRS	Projects of National and Regional Significance
PPM	Planning, Programming and Monitoring Funds
PSE	Plans, Specifications and Estimates
PSR	Project Study Report
PTA	Public Transportation Account
PTC	Positive Train Control
PTMISEA	Public Transportation Modernization, Improvement and Service Enhancement Account
RCTC	Riverside County Transportation Commission
RDA	Redevelopment Agency
RFP	Request for Proposal
RIP	Regional Improvement Program
RSTIS	Regionally Significant Transportation Investment Study
RTIP	Regional Transportation Improvement Program
RTP	Regional Transportation Plan
RTPA	Regional Transportation Planning Agencies
SB	Senate Bill
SAFE	Service Authority for Freeway Emergencies
SAFETEA-LU	Safe Accountable Flexible Efficient Transportation Equity Act – A Legacy for Users
SCAB	South Coast Air Basin
SCAG	Southern California Association of Governments
SCAQMD	South Coast Air Quality Management District
SCRRA	Southern California Regional Rail Authority
SHA	State Highway Account
SHOPP	State Highway Operations and Protection Program
SOV	Single-Occupant Vehicle
S RTP	Short Range Transit Plan
STAF	State Transit Assistance Funds
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TAC	Technical Advisory Committee
TCIF	Trade Corridor Improvement Fund
TCM	Transportation Control Measure
TCRP	Traffic Congestion Relief Program
TDA	Transportation Development Act
TEA	Transportation Enhancement Activities
TEA-21	Transportation Equity Act for the 21 st Century
TMC	Transportation Management Center
TMEE	Traffic Management and Environmental Enhancement
TSM	Transportation Systems Management
TSSDRA	Transit System Safety, Security and Disaster Response Account
USFWS	United States Fish and Wildlife Service
VCTC	Ventura County Transportation Commission
VVTA	Victor Valley Transit Authority
WRCOG	Western Riverside Council of Governments



MISSION STATEMENT

Our mission is to improve the quality of life and mobility in San Bernardino County. Safety is the cornerstone of all we do.

We achieve this by:

- Making all transportation modes as efficient, economical, and environmentally responsible as possible.
- Envisioning the future, embracing emerging technology, and innovating to ensure our transportation options are successful and sustainable.
- Promoting collaboration among all levels of government.
- Optimizing our impact in regional, state, and federal policy and funding decisions.
- Using all revenue sources in the most responsible and transparent way.

Approved December 4, 2019