

NORTH COUNTY TRANSIT DISTRICT



PROCUREMENT & CONTRACT ADMINISTRATION DIVISION

INVITATION FOR BID (IFB)

IFB# 32288

FOR

ULTRASONIC RAIL TESTING

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SECTION 01: NOTICE TO BIDDERS

1.01 SUMMARY

The North County Transit District (NCTD) seeks bids for an experienced and qualified Contractor to provide rail testing and inspection of, and reporting on, its rail system (the "Work"). The Work will encompass rail ultrasonic testing and inspections as prescribed by Federal Railroad Administration (FRA) Standards.

1.02 BID SUBMISSION INFORMATION

ELECTRONIC ONLY – Bidder will submit documents exclusively through NCTD's online bidding system. All required forms must be included with bid as PDF attachments and include the signature of an individual authorized to contractually bind the Bidder. Electronic bids must be received on or before 4:00 PM PT on March 31, 2023 for Ultrasonic Rail Testing. Specific submission requirements are contained in the "General Instruction for Bidders" section of this IFB.

Federal funds will be utilized for this procurement.

1.03 NON-MANDATORY PRE-BID CONFERENCE VIA ZOOM

Bidders are strongly encouraged to attend the procurement's Pre-bid Conference held at 1:00 PM PT on March 14, 2023 via the Zoom information below:

Topic: Pre-Bid: 32288 Ultrasonic Rail Testing

Time: Mar 14, 2023 01:00 PM Pacific Time (US and Canada)

Join Zoom Meeting

<https://nctd.zoom.us/j/86262309237?pwd=c3UrRHVxWkNQdkduVDVzMUhZVFZFBPUT09>

Password: 332177

Dial by your location

+1 669 900 6833 US Toll

+1 669 444 9171 US Toll

Meeting ID: 862 6230 9237

Find your local number: <https://nctd.zoom.us/j/86262309237>

1.04 COMMUNICATIONS

All communications relating to this IFB must be directed through the Q&A tab within the solicitation posted on the NCTD bid management system known as the PlanetBids Vendor Portal or PlanetBids. Any contact with NCTD during the solicitation period outside PlanetBids is grounds for disqualification. Answers to questions or requests for clarification will be responded to directly on PlanetBids.

Bidders shall submit questions, as specified above, no later than 4:00 PM PT on March 27, 2023.

NCTD changes to any part of the IFB, technical specifications, or requirements will be through the issuance of an addendum sent to all prospective bidders who have downloaded the solicitation from the NCTD PlanetBids Vendor Portal. No negotiations or changes to the IFB or Agreement terms will be made after the bidding deadline. Variations or additions to NCTD's terms included in bids or invoices shall not be binding on NCTD.

Bidders are cautioned that unwritten communications such as opinions, comments, explanations, responses to questions, etc. made by NCTD staff are not binding on NCTD. Bidders shall not make contact with NCTD staff, other than the assigned Contract Officer with regard to any aspect of this solicitation.

1.05 CONE OF SILENCE

Any verbal or written communications between any potential or actual Bidder, or its representatives and any NCTD Board Member, staff member, committee member, or contractor regarding this procurement are strictly prohibited from the date of the IFB advertisement through the date of execution of the Agreement. The only exceptions to this are: (1) written requests regarding information or clarification made to NCTD's designated Contract Officer during the allowable time period under the solicitation; and (2) any communications at a publicly-noticed meeting of the NCTD Board of Directors. Any violation of the requirements set forth in this section shall constitute grounds for immediate and permanent disqualification of the Bidder from participation in this procurement.

1.06 CONTRACT OFFICER

Responsibility for this IFB has been assigned to:

Paige Spounias-Flynn - Senior Procurement Contract Officer
North County Transit District
810 Mission Avenue
Oceanside, CA 92054

Please note that all communication regarding this solicitation must be made through PlanetBids.

1.07 VENDOR REGISTRATION REQUIREMENTS

To register to participate in this solicitation, go to www.gonctd.com and click on "About NCTD" at the top of the web page, then click "Contracting Opportunities" under the Doing Business with NCTD tab. The Online Bidding System is described and contains a link to the registration page of the PlanetBids Vendor Portal for NCTD at the following web address <http://www.planetbids.com/portal/portal.cfm?CompanyID=20134>.

Contractors must register with PlanetBids to receive email notices for this solicitation. Registered contractors are responsible for ensuring that they have downloaded all documents including addenda, plans, specifications, drawings, and other supporting documentation for the project directly from PlanetBids that are necessary to submit a responsive and responsible bid. Please contact the Contract Officer if you are unable to comply with this requirement.

For individuals with sensory disabilities, documents may be made available in alternate formats. For information regarding alternate formats, contact the Contract Officer listed in the solicitation or write Procurement & Contract Administration Division, North County Transit District, 810 Mission Ave., Oceanside, CA 92054.

1.08 AGREEMENT

The Contractor shall be required to execute NCTD's Agreement document, which is included in this IFB as an Attachment. The Agreement, which will eventually incorporate this IFB and portions of the winning bid not in conflict with those terms, contains language that is standard to all NCTD Agreements and generally is not negotiable. Exceptions to RFQ or Agreement language must be made by the Deadline for Submission of Questions or Request for Clarifications. If NCTD is willing to modify its language, it will post the modified language as part of an Addendum. If NCTD is not willing to agree to the changes, it will post that information on PlanetBids and Contractor should bid knowing that the proposed amended or substituted language will not be accepted. Failure to propose changes to the Agreement in accordance with these timelines shall be deemed a waiver by Bidder of any requests for changes.

1.09 BONDING COMPLIANCE

Bonds: The Contractor will be required to furnish NCTD with Performance and Payment (Labor and Material) Bonds in an amount equal to 100% of the successful bid prior to execution of the Agreement for the project. All bonds are to be secured from a surety company that meets all of the State of California Bonding requirements, as defined in California Code of Civil Procedure section 995.120, and is

authorized by the State of California, and all documents required by California Code of Civil Procedure section 995.660, to the extent required by law.

1.10 ESTIMATED BID SCHEDULE (SUBJECT TO CHANGE)

ACTIVITY	DATE/TIME
IFB Opportunity Advertisement	03/03/2023
Non-Mandatory Pre-Bid Conference via Zoom	03/14/2023 at 1:00 PM PT
Deadline for Submission of Questions or Request for Clarifications via PlanetBids Only	03/27/2023 at 4:00 PM PT
Bid Due Date and Time	03/31/2023 at 4:00 PM PT

1.11 DISADVANTAGED BUSINESS ENTERPRISES PARTICIPATION

As a recipient of federal funding, NCTD has established Disadvantaged Business Enterprise (DBE) program goals and is required to report on DBE participation each year so that its attainment efforts may be evaluated. NCTD’s overall agencywide goal for Federal Fiscal Year 2023-2026 is 11.3%. The term DBE means a for-profit small business concern as defined in 49 CFR 26.5. Even if no federal funding will be used on the Agreement awarded pursuant to this solicitation and no DBE goal will be set, the selected Bidder will still be required to document use of SBs and DBEs in the performance of the Work.

The Agreement awarded as a result of this solicitation will have federal funding. Whether or not there is federal funding, DBE contractors are highly encouraged to participate as a Contractor or subcontractor on NCTD procurements. The DBE goal for this procurement is set at 0%. Additional DBE requirements applicable to the Agreement are set forth in detail in other sections of the Agreement. If Contractor or any of its subcontractors, suppliers, or trucking companies are DBE-certified, Contractor is required to comply with the Notice Regarding Disadvantaged Business Enterprises Requirements and Instructions and complete a DBE Commitment Form and include it with its bid. In addition, a DBE letter of commitment is required from any DBE subcontractors confirming the DBE has agreed to participate and perform the work for which it has been listed in the List of Subcontractors.

Contractor shall report subcontractor payment details for any DBE subcontractor or supplier to NCTD using PlanetBids by the 15th of each month. Subcontractors with lower tier DBE subcontractors shall report payment details to NCTD using PlanetBids within 15 days from the date payment is received from Contractor or higher tier subcontractor. Contractor is responsible for ensuring subcontractors are verifying payments through PlanetBids on a timely basis and shall promptly notify delinquent subcontractors to verify payments. NCTD may impose penalties or withhold payments up to \$10,000 each month under the Agreement if Contractor fails to timely report subcontractor payments or reasonably notify delinquent subcontractors to report verification of payments.

END OF SECTION

SECTION 02: GENERAL INSTRUCTIONS FOR BIDDERS

2.01 DEFINITIONS

Whenever, in the IFB or Agreement Documents, the following words are used, the intent and meaning shall be interpreted as follows:

Agreement – the document attached to this IFB containing NCTD terms and conditions, which must be signed by the Contractor, or the Purchase Order (PO) issued to the Contractor awarded the project.

Agreement Documents – the 1) Agreement, 2) all of the contents of the IFB and associated attachments, addenda, drawings, technical reports, and technical specifications, and 3) the Contractor's bid, in that order of precedence. Said documents shall be considered as part of any agreement made pursuant to this solicitation. Any terms and conditions in Contractor's bid, invoices, or other documents referenced therein shall not be binding on NCTD if they conflict with the Agreement or IFB.

Bidder/ Bidders – persons, contractors, or corporations providing a submission of a bid to NCTD for a project.

Contractor - the person or company to whom an Agreement is awarded.

Days - calendar days unless otherwise specified.

Executive Director - the Chief Executive Officer of NCTD or his/her authorized representative or agent.

Grand Total Bid Price - the grand total price of the bid and shall include all direct and indirect labor and material costs, duties, fees, and any other charges applicable to complete the total requirements as specified in the IFB including all addenda, agreement drawings and technical specifications. **Taxes must be included in the bid as a line item but will not be included for purposes of determining the lowest bidder.**

Hazardous Substances and/or Contaminated Materials - any substance, waste, or material which is determined by any state, federal, or local governmental authority to be capable of posing a risk of injury to health, safety, and/or the environment, including, but not limited to, all substances, wastes, and materials designated or defined as hazardous, extremely hazardous, or toxic pursuant to Section 311 of the Clean Water Act, 33 USC Sections 1321, et seq., Section 1004 of the Resource and Conservation and Recovery Act, 42 USC Sections 6903, et seq., Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Sections 9601, et seq.; Section 25141 of the Hazardous Waste Control Law, California Health and Safety Code Sections 25117, et seq.; Section 25316 of the Carpenter Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Section 25316; Section 25501 of the Hazardous Materials Release Response Plans and Inventory Law, California Health and Safety Code Sections 25280-25299, et seq., as may be hereinafter amended.

NCTD or Grantee - NCTD or its authorized representative or agent.

NCTD Board of Directors - the Governing Board of NCTD.

NCTD Project Manager - the authorized agent(s) or representative(s) of NCTD designated to ensure strict engineering, performance, job site review, and related conformance with the agreement documents.

NCTD Contract Officer - the authorized agent(s) of NCTD who is authorized to review and administer, renew or terminate agreements.

Notice of Intent to Award (NIA) – an award notification, an NIA, a bid opening, or a revised list of Bidders from NCTD to all Bidders identifying the intent to award to the lowest responsive, responsible Bidder following bid opening. Issuance of the NIA opens the period for protest in accordance with the provisions of this IFB.

2.02 BIDDER SATISFACTION

It is the responsibility of the Bidder to thoroughly examine and be familiar with any material such as drawings and specifications provided. The failure or omission of Bidder to receive or examine any Agreement Documents, addenda, other documents or to visit the site to become acquainted with conditions there

existing, shall in no way relieve Bidder from obligations with respect to the bid requirements or to the Agreement. The submission of the bid shall be taken as prima facie evidence of compliance with this section.

2.03 BID FORM – SUBMISSION INFORMATION

Bids must be submitted on the forms provided. Bids submitted in any other form will be considered non-responsive and shall be rejected. Bids shall include a submission regarding the information and services requested. The bid must be signed with the name and title of the person duly-authorized to contractually bind the Bidder. Blank spaces on the appropriate bid forms must be properly filled in, and the content thereof must not be changed. All signatures shall be provided as legally binding handwritten signatures – typed signatures shall not be accepted. After signatures are placed in the appropriate places, pages can be scanned and uploaded to PlanetBids. Additions or changes shall not be made to the items mentioned therein. Any unauthorized conditions, limitations or provisions attached to a bid shall be cause for its rejection and in no event shall be a part of the Agreement Documents. The bid submitted must not contain any erasures, interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the person or persons signing the bid. Bids may be rejected if they show any alteration in form, are incomplete, or contain irregularities of any kind.

Bids are required for the entire Work, unless instructed otherwise in this IFB. Bids that are not for the entire work or that are incompletely written or compiled may be considered non-responsive and be rejected.

In the event that the Bidder is a joint venture or partnership, the bid declaration shall be submitted with the signatures of the authorized officers of both parties to the joint venture or partnership or attach a power of attorney naming the individual authorized to sign all necessary documents. The name of the individual who shall sign all necessary documents for the joint venture or partnership should the joint venture or partnership be awarded the agreement, shall act in all matters relative to the agreement resulting therefrom for the joint venture or partnership, shall be identified in writing on the document.

Delivery of electronic bid documents: Bidders will submit documents exclusively through NCTD's online bidding system, PlanetBids.

Because bids can at times be ambiguous, NCTD reserves the right to request additional information before making an award. NCTD also reserves the right to seek clarification from any Bidder about any statement or part in its bid that NCTD finds ambiguous.

Delivery of bid bond documents: Bidders shall submit their Bid Bond in a sealed package and shall write/type the following identification information on the outermost sealed package or FedEx/UPS/other address label:

Ultrasonic Rail Testing – IFB No. 32288
Attn: Paige Spounias-Flynn
NCTD
Bidder's Company Name and Address

Each bid bond submission should be addressed to the Contract Officer, identified above, and shall be delivered to 810 Mission Avenue, Oceanside, CA 92054 on or before the day and time set for the submission deadline. NCTD will not accept any bid bonds submitted by facsimile or email. **It is the sole responsibility of the Bidder to ensure that the bid bond package is delivered to the reception counter, accepted, and date/time stamped prior to the submission due date/time.**

If a bid bond is not received as specified in the manner above the bid will be considered non-responsive.

2.04 CAMP PENDLETON ACCESS

The Contractor and subcontractor(s) will require access to Camp Pendleton in order to access the work site, which requires a Base Access Form from NCTD's Administration Department and may also require the completion of the Defense Biometric Identification System (DBIDS) pre-enrollment process (depending

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on length of time needed for access on Base). Individual employees will need to personally take the Base Access Form, to the Camp Pendleton Base Control Access Branch office to obtain an access badge. Individual employees will need to have a REAL ID card in order to gain Camp Pendleton access. Should the employee not have a REAL ID, a Passport with a Driver's License will suffice. If the individual does not have a passport, a Social Security Card, Birth Certificate, and Driver's License will suffice. The Contractor's Project Manager identified in the Agreement will be the point of contact for requesting Base Access Forms from NCTD.

To obtain the Base Access Form please follow the following steps:

1. Send an email request to administration@nctd.org at least ten (10) business days prior to the needing access onto Camp Pendleton. The email's subject line **must include** the contract number and the body of the email must contain the following information;
 - a. The name of attendee/s requiring base access
 - b. The two-letter abbreviation of the State or Province where the attendee's Driver License/Identification Card/Passport was issued (whichever is going to be used for identification purposes)
 - c. The Driver License/ID number/Passport Number for B above (inclusive of hyphens or other punctuations)
 - d. Project description and the dates and times needing access
2. NCTD will send the request to BCAB and will inform the requester of the date they can go to the BCAB to obtain their temporary pass.
3. On that date the requestor shall go to the BCAB, in-person, with the Base Access Form and proper identification.
4. This process can take up to ten (10) business days. Untimely requests may be processed with no guaranty access will be granted in time, so please plan accordingly.

2.05 BIDDERS THAT ALSO MAY BE A SUBCONTRACTOR

No person or company shall be allowed to make, file, or be interested in, (as a principal) more than one (1) bid for the project. A Bidder may, however, submit a bid or quote prices to another Bidder as a subcontractor or supplier. A Bidder, is not disqualified from submitting a subcontract bid or quoting prices to other Bidders or from being a principal Bidder for the same work.

2.06 IFB/DRAWINGS/SPECIFICATION CHANGES

NCTD reserves the right to revise or amend the IFB or specifications up to 48 hours before the time set for opening the bids. Such revisions and amendments, if any, shall be issued by addenda to this solicitation. Copies of such addenda shall be sent to all prospective Bidders of the IFB. In the event that an addendum setting forth material changes, additions or deletions is issued when there is seventy-two (72) hours or less to the bid opening date, NCTD will extend the bid opening date by no less than three (3) business days. Clarification notices that do not significantly impact the Bidders' ability to submit a bid shall not result in an extension of the bid opening date.

2.07 ADDENDA

The effect of all addenda to the IFB shall be considered in the bid package and said addenda shall be made a part of the bid package submitted to NCTD. It is the Bidder's sole responsibility to ensure that all addenda have been acknowledged before submitting a bid response. Failure to acknowledge all addenda may render the bid package nonresponsive and result in its rejection.

2.08 APPROVED EQUAL REQUESTS – NOT APPLICABLE

2.09 DISCREPANCIES IN BIDS

In the event of a discrepancy between the bid declaration amount and the total amount entered by Bidder in PlanetBids, the amount in PlanetBids shall prevail. Failure to furnish clear and legible pricing for all specified bid items may render a bid nonresponsive. In the event there are unit price bid items and the "amount" indicated for a unit price bid item does not equal the product of the unit price and quantity, the unit price shall govern and the amount will be corrected accordingly. In the event there is more than one bid item in the bid and the total indicated does not agree with the sum of the prices bid on the individual items, the prices bid on the individual items shall govern and the total for the schedule will be corrected accordingly. NCTD reserves the right to determine math errors by Bidder in NCTD's favor.

2.10 BIDDERS SECURITY – BID BONDS

Each bid shall be accompanied by: (a) cash; (b) a certified check made payable to NCTD; (c) a cashier's check made payable to NCTD; or (d) a satisfactory bid bond payable to NCTD executed by the Bidder as principal and an admitted surety approved to conduct business in the State of California as surety, in an amount not less than ten percent (10%) of the maximum amount of the bid. Personal sureties and unregistered surety companies are unacceptable. The California admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be a satisfactory corporate surety with a rating of no less than A-, VII. The cash, check or bid bond shall be given as a guarantee that the Bidder shall execute the Agreement if it be awarded to the Bidder in conformity with the Agreement Documents and shall provide the surety bond or bonds as specified therein with the bid submission.

2.11 CONTRACT AND PERFORMANCE AND PAYMENT BONDS

The contract form which the Bidder awarded an Agreement shall be required to execute, and the form of the Performance Bond equal to one hundred percent (100%) of the successful bid, and Payment (Labor and Material) Bond equal to one hundred percent (100%) of the successful bid which the Contractor shall be required to furnish at the time of execution of the Agreement, are included in the Agreement Documents and should be carefully examined by Bidders. The required number of executed copies of the Agreement, the Performance Bond, and the Payment Bond is as specified in the Special Conditions. Contractor shall be required to submit the Performance Bonds, Payment Bonds, and executed Agreement, as required herein, prior to the award of contract.

The Performance and Payment (Labor and Material) Bonds must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure Section 995.120. In addition, to the extent required by law, the Bonds must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of San Diego that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California.

In the event the Bidder fails or refuses to post the required bonds, as specified in the IFB, NCTD may declare the Bidder's bid bond security forfeited as damages caused by the failure of the Bidder to post the additionally required bonds and execute such copies of the Agreement, and NCTD may award the Agreement to the next lowest responsible Bidder, or may call for new bids.

2.12 WITHDRAWAL OF BIDS

Prior to Submission Closing: Any Bidder may withdraw its submission, either personally or by written request, at any time prior to the scheduled time for opening of bids. Any request to withdraw a submission shall be so worded so as not to reveal the amount of the original bid.

After Submission Closing: No Bidder may withdraw its submission for a period of one hundred twenty (120) days after the submission closing date. Submissions may be subject to acceptance by the NCTD Board of Directors during this one hundred twenty (120) day period.

2.13 LATE BIDS

NCTD's online bidding system, PlanetBids, will not accept submittals after the date and time specified.

2.14 OPENING OF BIDS

Bid results shall be available immediately following bid closing on PlanetBids.

2.15 VALIDITY OF BIDS

All bids shall remain valid and binding for a period of one hundred twenty (120) days after the bid closing date.

2.16 SINGLE BID PROCEDURES

In the event a single bid is received, NCTD may conduct a price and/or cost analysis of the bid. The Bidder shall cooperate with NCTD to assist in this analysis. The analysis is the process of examining the bid and evaluating the separate cost elements. In addition, if a single bid is received, NCTD may negotiate prices or other terms and conditions with Bidder if it is determined to be in the best interest of NCTD.

2.17 TIE BID PROCEDURE

In the event of a tie bid situation, and if two or more Bidders remain equally eligible after determination of responsibility and responsiveness, award shall be made to the Bidder whose bid was received first as evidenced by the time/date stamp recorded by Planetbids.

2.18 REJECTION OF BIDS

NCTD reserves the right to reject any and all bids and to waive any informalities or irregularities in the bids. If all bids received are rejected, NCTD reserves the right to re-solicit the services by issuing a new IFB or to cancel the solicitation at any time prior to agreement award and not award an agreement.

2.19 INCURRED COST

NCTD will not reimburse the Bidders for costs incurred in the preparation of bids or after submission, during the Agreement award process, or in the event of cancellation of the procurement.

2.20 PRICE ADJUSTMENTS

Bid prices shall be subject to adjustment during the term of the Agreement based on the following mechanism:

Bidder or NCTD, may request a price increase or decrease based on changes in the Consumer Price Index (CPI). CPI to be used is CPI – US City Average, standard reference base, not seasonally adjusted, for the 12 months ended 90 days prior to the anniversary date of the Agreement. Requests for changes must be initiated 60 days prior to the anniversary date of the Agreement. Only one price adjustment per year will be granted on the anniversary date of the Agreement. The floor price will be the price quoted in the bid and the ceiling price will be no more than 3% per annual request. Failure to make a price adjustment request on a timely basis shall be deemed a waiver for price adjustment for the applicable year.

2.21 AWARD OF AGREEMENT

After the public posting of the bid opening, an evaluation of the bid prices and the Bidders' submissions of the required completed forms and certifications will be performed. Determinations of responsiveness and responsibility (technical and financial) are made. The award of the Agreement, if made, shall be to the lowest responsive and responsible Bidder whose bid complies with all of the prescribed requirements of the Agreement Documents.

If the Agreement value exceeds five hundred thousand dollars (\$500,000), approval to award an Agreement by the NCTD Board of Directors is required. If the Agreement value is five hundred thousand dollars (\$500,000) or less, NCTD staff will make the award determination. Upon approval, NCTD intends to execute an Agreement after receipt insurance certificates.

NCTD reserves the right to award multiple agreements when it is determined by NCTD that it is in the best interest of NCTD to do so.

2.22 QUALIFICATIONS AND LICENSING REQUIREMENTS

Ensure staff is properly licensed and/or certified to operate the necessary vehicles and equipment for which licensed and/or certified personnel are required by NCTD, Federal, State, or local law, codes, or ordinances.

Contractor and Subcontractors must be registered with the California Department of Industrial Relations (DIR) pursuant to Labor Code 1725.5. This project is subject to compliance and monitoring by the DIR.

Testing shall be performed only by experienced and qualified personnel and shall follow the requirements of the Federal Railroad Administration (FRA) regulation 49 CFR 213.237, and the American Railroad Engineering and Maintenance Association (AREMA) Manual for Railway Engineering. The designated operators should have a minimum of 5 years' experience, shall have performed ultrasonic testing on a Class One carrier or a heavy rail commuter rail line. As part of the bid package, Bidders should attach the designated personnel proof of qualifications and resumes, and these will be updated as necessary during the period of performance of the Contract. This documentation is part of bidder responsiveness check and NCTD will not award the contract before they are received.

2.23 PROTEST PROCEDURES

An actual or prospective Bidder who is aggrieved in connection with the solicitation or award of an agreement may submit a protest. The protest must be submitted in accordance with NCTD's Protest Procedures found at this link: <https://gonctd.com/wp-content/uploads/2022/06/Protest-Procedures-Final-June-2022.pdf>

END OF SECTION

SECTION 03: SCOPE OF WORK

03.01 BACKGROUND

North County Transit District (NCTD) seeks to engage with an experienced and qualified Contractor to provide rail testing and inspection of, and reporting on, its rail system. The Work will encompass rail ultrasonic testing and inspections as prescribed by Federal Railroad Administration (FRA) Standards and occur at least three times per year. The Work will also include the preparation and the submittal of detailed reports of defects that may be discovered during the tests and inspections.

- A. NCTD is the agency responsible for public transportation in Northern San Diego County, California. NCTD (for the purpose of this Agreement) operates the COASTER rail service between Oceanside and San Diego, and the SPRINTER rail service between Escondido and Oceanside under and pursuant to Public Utilities Code section 125000, et seq.
 - 1. NCTD owns 60 miles of mainline railroad track (the San Diego Subdivision) from the Orange County/San Diego County line to the San Diego Santa Fe Depot (used by COASTER, Metrolink, and Amtrak Pacific Surfliner passenger trains, along with BNSF Railway freight trains).
 - 2. NCTD also owns the 22-mile Escondido Branch (Escondido subdivision) used by NCTD SPRINTER and BNSF freight trains. The line runs from the Oceanside Transit Center to the Escondido Transit Center.
- B. NCTD has maintenance responsibility for the following routes that accommodate passenger and freight operations:

Route	Weekday Train Counts			
	<u>NCTD</u>	<u>Metrolink</u>	<u>Amtrak</u>	<u>BNSF</u>
County Line to Oceanside (COASTER, San Diego Sub)	0	11	20	11
Oceanside to San Diego (COASTER, San Diego Sub)	30	0	20	8
Oceanside to Escondido (SPRINTER, Escondido Sub)	68	0	0	2
<i>Saturday, Sunday, and holiday train counts are less than the weekday train counts shown above.</i>				

- C. These joint transportation corridors are considered a part of NCTD’s and the general railroad system. The size, weight, and length of freight trains, and the speed of passenger trains, are similar to other railroad properties throughout North America. Maximum annual tonnage is approximately 10 million gross tons (mgt), maximum speed is 90 miles-per-hour (mph), the maximum main line curvature is 14 degrees, the maximum track gradient is 4.0 percent.

03.02 LOCATIONS

Locations of services provided under this Agreement:

- A. Railroad Right-of-Way (ROW)
 - 1. San Diego Subdivision: (60.1-mile section of Los Angeles – San Diego – San Luis Obispo Rail Corridor (LOSSAN Corridor) from the Orange County Line (MP 207.4) south to the City of San Diego’s Santa Fe Depot (MP 267.7)), average of 100’ wide, with sections up to 200’ wide.

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2. Escondido Subdivision (22-mile section Oceanside (MP 99.3) east to Escondido (MP 121.66)), average of 100' wide, with sections up to 200' wide.

03.03 GENERAL REQUIREMENTS

A. Safety

1. NCTD emphasizes safety in all employee and contractor performance. Contractor will assign a person responsible for the supervision/management of its crew and will ensure all necessary safety procedures are followed. This individual will also serve as the NCTD contact for all projects refer to Appendix A.
2. All staff entering NCTD ROW must be Roadway Worker Protection (RWP) training certified. Contractor shall be responsible (cost to be included in bid) for ensuring employees have been Roadway Worker Protection (RWP) trained in accordance with NCTD's working around the rails and right of entry requirements. The Federal Railroad Administration (FRA) requires RWP training to any worker whose job duties include cleanup, inspection, construction, maintenance, or repair of track, bridges, roadway, signal and communication systems, roadway facilities, fencing or maintenance machinery on or near the track. RWP training is a 4-hour, classroom-based training available in English as well as Spanish with prior arrangement. Re-certification is required annually. Information regarding RWP training, including cost and scheduling, can be found at <https://gonctd.com/about-nctd/accountability/working-around-the-rails/>
3. Contractor shall not use Personal Electronic Devices (PED) within 25' of any rail. Contractors may use PEDs at station platforms when they are clear of train movement and behind the tactile strip. Refer to Appendix B.
4. Contractor will conform to all applicable Occupational Safety and Health Association's (OSHA) standards, rules, regulations, and orders established by the State of California. The Contractor shall provide all safety equipment, materials, and will supply training as required. The Contractor shall provide its employees with appropriate safety apparel or personal protective equipment (PPE) which includes but is not limited to, sturdy leather work boots with a defined heel, ANSI approved hardhat, NCTD approved safety vest, gloves, and safety glasses as necessary.
5. Contractor shall notify NCTD's Project Manager or designee in case of emergency or hazards encountered during operations.
6. Work may be performed in inclement weather. Jobsites can be in heavy foliage, poison oak, steep embankments, next to train tracks, near wildlife, by creeks, and other areas requiring alertness to the environment and preplanning to prevent injury or illness. Additionally, some locations may require the use of fall protection.

B. Access to Right-of-Way (ROW)

1. NCTD will provide flagging as necessary for work being performed within the ROW.
2. All workers entering NCTD ROW must attend a safety briefing meeting with NCTD prior to entering the ROW and abide by all safety requirements.

C. Additional Contractor Responsibilities

1. Provide and manage everything necessary to complete required Work including but not limited to labor, equipment, materials, and consumables. All equipment and materials shall

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be stored at locations provided by the Contractor, not on NCTD property unless otherwise approved by NCTD's Project Manager.

2. Have a Quality Control Program that ensures all aspects of Contractor's Work is conducted and completed in the highest quality standards and consistent with NCTD and the written Contractor requirements.
3. Reduce the environmental impacts of Work performed under this Agreement by using, to the maximum extent, environmentally sound practices, processes, and products.
4. NCTD will not be financially responsible for any delays to Work caused by the Contractor.
5. Disposal of waste shall be at no additional cost to NCTD.

D. Environmental Requirements, Regulations, and Permits

1. Contractor shall properly dispose of any waste or hazardous material generated while performing Contract services throughout NCTD facilities. Disposal and storage of waste and hazardous material shall be in accordance with all applicable federal, state, and local regulations. Contractor shall return the work area to its original conditions after conducting work efforts included in this paragraph.
2. Contractor shall monitor and notify the designated NCTD personnel immediately by phone of any incident with possible environmental impacts, regardless of the responsible party. This notification will not relieve Contractor from its obligation to initiate and supervise cleanup and disposal of spilled material.
3. Fines and Penalties. Contractor shall be responsible for any fines or penalties imposed for failure to comply with conditions or requirements of environmental regulations or permits.

E. Coordination and Compliance with Regulatory Agencies

1. Contractor is responsible for maintaining and monitoring compliance with all applicable federal, state, and local laws and regulatory requirements.
2. Contractor shall closely coordinate with NCTD, prior to initiating contact with any regulatory agencies. Routine communication for ongoing permitting shall not require NCTD prior approval. Contractor shall keep NCTD fully apprised, both by immediate oral notification and in writing, of any such discussions with regulatory personnel.
3. Contractor shall immediately notify NCTD's Project Manager when regulatory inspectors are on NCTD property and shall immediately provide all inspection reports issued by regulators to NCTD. When a regulatory agency identifies a violation or cites a defect, Contractor shall provide NCTD Project Manager with a written remedial action plan within five (5) business days, which addresses how it intends to resolve (or has already resolved) all regulatory violations, and any mitigating circumstances that led to violation. Contractor shall provide the NCTD Project Manager with any inspection reports recommending violation. All penalties and fines imposed regarding the violation of State and Federal codes, regulations, and laws shall be paid by Contractor inasmuch as the violation occurs as a result of Contractor's failure to perform as required by the Agreement.
4. Contractor is responsible for informing all staff and subcontractors on all regulatory compliance requirements and enforcing them with staff.

03.04 SPECIFIED SERVICES

- A. The Contractor is to conduct Internal Rail Flaw Detection along the NCTD's Service Property as required under 49 CFR 213.237 and 49 CFR 213.239, using the best available level of inspection equipment. Inspection equipment must be capable of detecting rail defects in accordance with FRA CFR Part 213.237 and 213.339.

The Contractor is to provide an internal rail testing system, inclusive of all required nondestructive testing equipment as defined herein, personnel and consumables (including fuel) required for the detection of traffic-induced and manufacturing discontinuities and defects in the rail head. The Contractor shall charge one lump-sum fee for mobilization, which shall include de-mobilization. The Contractor shall provide all necessary labor, supervision, equipment, materials, consumables, systems, hardware, software, planning and communications to detect, identify and report on rail defects by ultrasonic non-destructive detection methods.

Testing is to be performed with induction and/or ultrasonic test equipment which will detect internal defects in rails while traveling at a minimum rate of six miles-per-hour. In addition, ultrasonic hand testing equipment must be available on the rail testing unit to verify defects located by the rail testing unit and in addition the hand testing equipment will be used to test out of track plug rails and to verify crossover rails between crossover turnouts. Each defect must be marked with a highly visible paint on both sides of the web and base.

1. Frequency of testing of all main lines, sidings, turnouts, crossovers, NCTD designated out of track plug rail, and railroad crossing, and selected branch line turnouts shall be in accordance with guidelines listed below:
 - a. Rail Routes: Three times per year, which shall occur during February, June, and September of each year of the Agreement.
 - b. In Track Welds: Upon request by NCTD testing of in-track welds done as part of maintenance and rehabilitation work in track will be done within 72 hours of being requested. Thermite weld shall be tested ultrasonically in accordance with 49 CFR 213.341(d) for the ultrasonic inspection of rail.
 - c. Plug rail as requested by NCTD in advance of the Contractor equipment working on NCTD property in conjunction with the testing specified in a. and b. above.
 - d. NCTD and LOSSAN trains operate service for twenty-one-and-a-half hours daily. Passenger service runs from 4:00 AM of one day to 1:30 AM (Pacific Time) of the following day, seven days a week. Freight trains operate 24 hours per day when passenger service schedules allow. All testing shall be performed so as not to interfere with passenger service on the adjacent track or beyond the limits of the defined work area. Suspension of freight operations shall be coordinated a minimum of 21 calendar days in advance of planned testing.
 - e. The rail testing shall be performed during an approved work window by NCTD, within a defined area, generally between 9:30 PM and 4 AM (Pacific Time). This time allowance may vary depending on the designated location of testing but averages four (4) hours per shift. The time of availability may also be adjusted by NCTD to allow it to accommodate additional operating requirements.
 - f. The workday shall commence at a start time and location as previously determined by the responsible customer representative and the contractor's crew. The workday shall

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end at the time and off-track location, when work and reports have been completed, and when the customer representative releases the Contractor's crew.

2. The rail testing vehicle must be able to travel at a minimum of 25 mph. Additionally, the vehicle must be capable of shunting the track (non-insulated). The equipment provided must operate within NCTD's approved working envelope identified as American Association of Railroads (AAR) Plate C on the Escondido Subdivision and AAR Plate K on the San Diego Subdivision. Refer to Appendix C.

C. DEFINITIONS FOR SCOPE OF WORK

"A" Scan – A data presentation method that displays the amount of received ultrasonic energy as a function of time.

"B" Scan – A data presentation method applied to pulse echo techniques. It produces a two-dimensional view of a cross-sectional plane through the test object. The horizontal sweep is proportional to the distance along the test object while the vertical sweep is proportional to depth, showing the front and back surfaces and discontinuities between.

Delay Hours – Billable hours identified as delays caused by an NCTD controlled item such as train movements and operation restrictions and other delays contributed to by NCTD.

Hand Testing – Rail flaw detection using a manual method.

Induction – Induction testing utilizes principles of electromagnetic induction to locate cracks, measure thickness and categorize certain material properties in metals. An eddy current probe generates a magnetic field that induces currents that flow in a circular path in the test material. Changes in the integrity or thickness of the test piece will in turn affect current flow, the magnetic field and ultimately the magnitude and phase of the voltage in the coil. The instrument monitors the probe output and displays information for analysis.

Non-Billable Hours – On-track non-testing hours that may include service or equipment failure time, safety briefings, predicted weather conditions and other Contractor delays.

Service Equipment Testing – Testing of rail by vehicle carried test equipment. Rail flaw detection using an automated test method on on-track equipment.

Testing Hours – Billable time that testing of rail by the test vehicle is done. Testing hours include only the time when testing is performed.

Travel Hours – Billable time for on-track travel to and from test locations and on-track travel between NCTD subdivisions.

Ultrasonic – Ultrasonic testing uses high frequency, highly directional sound waves to measure material thickness, find hidden internal flaws or analyze material properties in metals, plastics, composites, ceramics, rubber, and glass. Using frequencies beyond the limit of human hearing, ultrasonic instruments generate short bursts of sound energy that are coupled into the test piece. The instrument monitors and analyzes the detected reflected or transmitted wave patterns to generate test results.

D. CALIBRATION OF EQUIPMENT ON RAIL TEST CAR

An equipment calibration check must be performed at the beginning of each work shift, and throughout the shift as needed. This calibration must be logged and documented in order to verify that the unit is functioning properly. On a daily basis, all ultrasonic hand test instruments must be calibrated to the equipment minimum certification block. This is done to comply with a

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known and valid relationship to nationally recognized standards. The calibration status of the test equipment must be maintained at all times. Spare items/tools such as transducers, probe wheels and hand test scopes must be identified as being in compliance with standards. The date of calibration must be visible on the instrument either through use of a tag or a sticker. Upon request from NCTD, the Contractor shall provide a calibration procedure for the NCTD's review and approval together with a copy of the documented calibration check provided to the Manager, Track and Structures Maintenance.

E. CONDITIONS THAT MAY AFFECT FLAW DETECTION PERFORMANCE

Dirty, greasy, oxidized or severely worn rail surfaces, built-up rail ends, torch cut rail ends, multiple bolt hole drillings and bond pin drillings may affect flaw detection performance; however, maximum effort is provided by the Contractor's detector car operator to test the rail section as effectively as possible under such adverse conditions. Any rail section designated by Contractor to not be testable must be reported to NCTD.

F. COMMUNICATIONS

The Contractor will be required to operate across several different subdivisions and must have proper radio equipment and training to communicate with NCTD on NCTD's radio frequencies. The Contractor shall supply and install this equipment on all support vehicles and hi-rail equipment working on NCTD's property.

G. SERVICE FAILURES

If requested by NCTD, the Contractor representative must be available the next business day after initial request, to examine and evaluate service failures for determination of defect detection ability at the time of the most recent test. Service failure records associated with each test car, as well as records of the total number of rails having defects at the time of testing, will be generated by the Contractor, and maintained for NCTD.

H. RAIL TEST EQUIPMENT

The Contractor's chief operator must ensure that the test vehicle is operational, and that equipment functions as required in accordance with good industry practices. This step is necessary to ensure an accurate test which conforms to the detection and marking out of defects as per NCTD and FRA 49 CFR Part 213 procedures. Equipment that is found to be out of the aforementioned specifications in terms of performance and/or accuracy must be immediately replaced or repaired before testing is resumed. Rail tested using known or suspected malfunctioning equipment must be retested. The Contractor must provide, on an annual basis, a yearly report concerning research developments relative to the advancement in rail flaw detection technology.

I. TESTING METHODS

Ultrasonic Rail Flaw Detection using an automated test method on track equipment must comply with the following:

1. Preparation for Testing

- a. The time base for each channel (probe) shall be calibrated or checked (if memory driven calibrations are used) using A-scan. This shall be performed on rail that is representative of that to be tested. Test ranges may be set for each probe using known artifacts (e.g., foot of rail, bond holes, bolt holes, rail ends, etc.). Test ranges shall be adequate to meet the scanning depths of this standard.

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- b. Gate positions shall be set or checked to ensure compliance with the scanning depth requirements of this specification. Prior to testing, a brief run may be required to set interface gate widths accurately.

2. Probes

Probe characteristics shall be known and recorded. Probe configurations shall be such that cross-talk interference does not occur. The Contractor shall submit details of any additional configurations that will be utilized.

3. Sensitivity

The specified areas of the rail shall be scanned using gain levels that, as a minimum, produce evidence of "grass" on the screen on all channels and a satisfactory back wall echo. Threshold levels within defect gates shall be set just above "grass levels". Gain should not be lowered where excessive interference occurs but rail surface, probe condition, etc., should be checked. If interference persists, threshold levels should be changed, and gain maintained. Threshold levels may be set that utilize distance and amplitude corrections provided agreement has been reached and NCTD's Project Manager advised.

4. Pulse Repetition Rate (PRR)

Pulses shall be generated for every two inches of travel (maximum). Smaller increments shall be the subject of agreement between Contractor and NCTD's Project Manager.

5. Pulse Count

The selection of pulse count for eliminating non-significant non-destructive responses shall be the subject of agreement between the Contractor and NCTD's Project Manager.

6. Test Vehicle Service Equipment Scanning Requirements

The 0° type probe shall be used to scan the central part of the rail head, the whole of the rail web and the central part of the rail base perpendicular to the rail. The dead zone depth shall be known and recorded.

The 38° type probe shall be used to scan the central part of the rail head, the whole of the web and the central part of the rail base.

The 70° type probe shall be used to scan the rail head and part of the upper web.

7. Evaluation

For any calibration (including PRR and pulse count) all signals above threshold shall be recorded. Individual signals or groups of signals interpreted as defects shall be evaluated by hand testing.

J. Rail Flaw detection utilizing a manual method (hand testing) must comply with the following:

1. Preparation for Testing

- a. Ensure that the rail surface conditions are such that:

- (1) Uniform probe contact is maintained during the test.
- (2) The rail surface is smooth and free from pits on sharp irregular surfaces.

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- b. It is preferred that the time base be calibrated in accordance with best industry practices. However, the use of a rail section and accurately known reflectors may be permitted by agreement between the Contractor and the NCTD's Project Manager. The test ranges selected for each probe shall be adequate to meet the scanning depth requirement of this standard.

2. Probes

Similar probe angles to those used for automated testing shall be utilized. Probe characteristics shall be known and recorded.

3. Sizing

The Contractor shall advise and recommend to the NCTD which sizing method shall be used. Suppression shall not be used.

J. MINIMUM PERFORMANCE REQUIREMENTS

1. The inspection system provided must meet the following minimum performance requirement for rail flaw detection irrespective of the rail type tested, excluding severe surface fatigue or rusted rail: the system must comply with FRA Track Safety Standards 49 CFR Part 213.237.
2. The Contractor must communicate an invalid test due to rail surface conditions immediately. This confirmation will be communicated to the foreman or supervisor in charge, to include why a "NO TEST" has been issued. Once a "NO TEST" is issued, all efforts must be made by the rail test operator to ensure that a valid test can be conducted. If, after exhausting all efforts, it is deemed that a valid test cannot be conducted then the contract policy is to instruct the Contractor's chief operator to contact the NCTD's Project Manager, by the best means within twelve (12) hours.

K. DEFECTIVE RAIL NUMBERING

All vehicles and hand testing crews are to use a defect numbering system. When performing tests for rail defects, as described in this Section P and in Section Q below, the Contractor shall achieve the reliability ratio, defined as the percentage of tests in which it discovers defects where defects actually exist in the track, as set forth in the following table. In the column headed "size", where the number or range is a percentage, the percentage refers to the portion of the piece of rail tested that is found to have a defect. Thus, for example, where the defect is a "transverse defect in the rail head", and the defect involves between 10% and 20% of the piece of rail tested, the Contractor is expected to achieve 85% accuracy in detecting the flaw in the piece of rail subject to test.

L. MINIMUM PERFORMANCE SPECIFICATION FOR FULL RAIL TESTING

Performance of rail testing should meet the specifications shown in the following table.

MINIMUM PERFORMANCE SPECIFICATION FOR FULL RAIL TESTING		
Defect Type	Size	% of such defects properly indicated as flaws in any single test
Transverse defects in the rail head (e.g., transverse fissure, compound fissure, detail fracture from shelling, detail fracture from head)	10% to 20%	85%
	21% to 40%	90%

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check, engine burn fracture, welded burn fracture)	41% to 80%	95%
	81% to 100%	99%
Defective Welds	10% to 20%	85%
	21% to 40%	90%
	41% to 80%	95%
	81% to 100%	99%
Longitudinal defects in the rail head (e.g., horizontal split head, vertical split head)	Up to 2.49 inches long	85%
	2.5 inches to 36 inches long	95%
	Over 36 inches long	95%
Web Defects (e.g., head and web separation, split web)	1 to 2 inches	75%
	2 to 4 inches	95%
	More than 4 inches	99%
Web Defects in Joint Area (e.g., bold hole crack, head, and web separation)	1 to 2 inches	75%
	2 to 4 inches	95%
	More than 4 inches	99%

M. CLASSIFICATION OF RAIL DEFECTS

Defects found in the rail shall be marked and noted using GPS coordinates, milepost location and high visibility spray paint. Defects shall be classified in accordance with FRA 213 standards, shown in the following table:

Defect	Length of defect (Inch(es))		Percent of existing rail head cross-sectional area weakened by defect		If defective rail is not replaced or repaired, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Compound fissure			70 100	5 70 100	B. A2. A.
Transverse fissure			25	5	C.
Detail fracture			60	25	D.
Engine burn fracture			100	60	A2, or [E and H].
Defective weld				100	A, or [E and H].
Horizontal split head	1	2			H and F.
Vertical split head	2	4			I and G.
Split web	4				B.
Piped rail	(1)	(1)			A.
Head web separation					
Defective weld (Longitudinal)					
Bolt hole crack	½	1			H and F.
	1	1 ½			H and G.
	1 ½				B.
	(1)	(1)			A.
Broken base	1	6			D.

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	6 ⁽²⁾				A, or {E and I}. or E.
Ordinary break					C.
Damaged rail					H.
Flattened rail Crushed head	Depth \geq 3/8 and Length \geq 8				

¹ Break out in rail head.

² Remedial action D applies to a moon-shaped breakout, resulting from a derailment, with length greater than 6 inches but not exceeding 12 inches and width not exceeding one-third of the rail base width.

*Refer to FRA 213 manual for notes section.

N. HIGH RESOLUTION TESTING OF RAIL JOINTS

High Resolution Testing of Rail Joints is defined as a test that, in addition to detecting defects in the rail head, detects joint defect problem areas to a resolution as defined in the following:

MINIMUM PERFORMANCE SPECIFICATION FOR RESOLUTION TESTING OF RAIL JOINTS		
Defect Type	Size	Percent of such defects properly indicated as flaws in any single test
Web Defects in Joint Area (e.g., bolt hole crack, head and web separation)	1-2" long	75%
	2-4" long	85%
	More than 4"	99%

O. REPORTS

1. The daily reports will be submitted to the NCTD's Project Manager and Manager Maintenance of Way during the testing period specifying date of inspection, car movements, mileage inspected, start and stop points, testing and delay times, defect location(s), type and size of rail defect(s), nature of any internal defects, and any rail exceptions within which a valid search for internal defects cannot be conducted.
2. Daily, at the completion of testing, reports must be submitted via email and include the following information:
 - a. Each and every defect is to be allocated an identification number.
 - b. Actual size and/or length of the flaw shall be indicated.
 - c. The rail in which the flaw is located shall be shown (Left, Right, North, South).
 - d. Size of rail and its year of manufacture.
 - e. The location of the defect with respect to the mileposts and GPS location shall be determined within five feet.
 - f. Proper track and subdivision distinction.
 - g. In the case of defective welds, the type of weld shall be indicated, i.e., Thermo (T), Flash Butt (FB) or Factory Weld.
 - h. The computer files should contain all defect information, vehicle movements, vehicle delays and data requested.

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- i. At the end of each tour's test, a final line should be written to the file summarizing the movements and delays
- j. Each file should contain all of the information collected in one and only one work shift.
- k. Each file should have a unique name relating to the month, day, and year of the specific test.
- l. Required daily signed reports are:
 - (i) Defective Rail Report
 - (ii) Movement Report
- m. In addition to the daily reports, a summary Aggregate Invoicing Report for the system will be submitted after the completion of all testing for that test period. It will contain in a tabular form; the date of testing, the number of miles tested on that day, the hours testing was conducted, the hours of delay that testing was not done, and any other billable hours.

P. WORK SAFETY AND SAFETY EQUIPMENT

The personal protective equipment (PPE) must be on the test vehicle and used as follows:

- 1. Provide Contractor's Detector Vehicle Safety Manual for review upon request.
- 2. All Contractor employees must have attended the NCTD's Roadway Worker Protection (RWP) class and successfully passed the written examination prior to commencing work on NCTD Service Properties. Cost of class is at Contractor's expense.
- 3. The Contractor must maintain a formal safety program that complies with NCTD requirements. The Contractor must furnish the NCTD with a copy of their safety program for review and approval. Contractor shall maintain a safety program officer and furnish that person's name and phone number to the NCTD.
- 4. Compliance With Industrial Safety Codes: Equipment shall be in complete compliance with all requirements of the laws of the State of California as well as all applicable federal laws and regulations at date of delivery and/or services.

Q. WORK DELAYS

- 1. NCTD shall not be liable for any Contractor's costs where working time is lost on scheduled days through acts or omissions of the Contractor or breakdown of Contractor's equipment.
- 2. Reasonable replacement of consumables or cleaning of roller search units, etc. is not classified as loss of working time. However, if in the opinion of the NCTD's Project Manager or local maintenance representative, it is considered that excessive time is taken in the execution of these functions, the excessive time may be deemed as a loss of working time. Accordingly, the Contractor will be subject to a reduction in payments for any excessive time taken in such replacement of consumables as determined by the NCTD's Project Manager. Time taken to supply fuel, water, and routine maintenance is not considered working time. The Contractor will supply details of daily maintenance requirements in its bid documents.
- 3. The NCTD Project Manager will work with the Contractor to determine allowable weather delays. This plan will also trigger a lost day due to sustained winds of 40 mph or above.

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These delays would constitute a joint test delay and will be defined as neither the NCTD's nor the Contractor's fault.

4. On invoices submitted to the NCTD, the Contractor must show the cost for the test car by the hours testing for each day. Routine maintenance, calibration and fueling is to be done at the beginning of the shift before track time and work windows are scheduled. Hourly on track charges must be defined as "TESTING HRS", "DELAY HRS", "TRAVEL HRS" and "NON-BILLABLE HRS". Testing hours include only the time when testing is performed. Delay hours must be identified with only time identified as NCTD delays. Example: involving NCTD provided Roadway Worker in Charge (RWIC) availability, train movements and operation restrictions and other delays contributed to by NCTD. NCTD involved safety meetings, training, investigation, and safety audits are all non-billable time. Travel hours are for on track travel to and from test locations and for on track travel between NCTD subdivisions. Non-billable hours are for and not limited to on track non- testing hours that may include service or equipment failure time, safety briefing, predicted weather conditions and other Contractor delays.
5. The following would be considered a delay day that is not weather related:
 - No NCTD Pilot
 - No NCTD Track Time
 - Access Track Blocked
6. Force Majeure

NCTD shall not be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder during any event of force majeure or due to any reason beyond its reasonable control.

R. QUALITY AUDITS / QUALITY CONTROL

1. NCTD's Project Manager or designated personnel will be conducting audits on various contractor detector vehicles and hand testing crews while performing work on NCTD Service Properties. The primary purpose is to ensure that all personnel are conducting operations in accordance with the NCTD, FRA Track Safety Standards CFR Part 213, FRA Railroad Workplace Safety CFR Part 214, and Contractor standards. Conversely, the Contractor's chief operators and crew must review all NCTD and Contractor standard procedures and special instructions to ensure compliance. This includes safety as well as testing standards. During these NCTD audits, the Contractor must make requested documentation available to the NCTD personnel to review. The documentation may include but is not limited to:
 - a. Detector Vehicle Safety Manual
 - b. Operators Manual
 - c. Operators Hand Test Manual (Rail Flaw Detector Manual)
 - d. Peaking Fixture Manual
 - e. File of Supervisor Audits - EWR Book
 - f. Log with Operator and Assistant Operator Tape Time
 - g. Daily Checklist - Detection Cabinet - Hand Test Scope
 - h. Daily - weekly checklists - Monthly Maintenance checklists
 - i. NCTD RWP certification and photo ID
 - j. Contractor's vehicle's "shunting" and hi-rail inspection, qualification, certification including location, date, and test details
 - k. Information relative to Contractor technical crew training, on track equipment operation testing, and Driver's Certifications, {license, CDL, registration, insurance, etc.

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2. Copies of all internal audits must be kept on file and will be reviewed for the following:
 - a. Supervisor cabinet checklist
 - b. Q.A./Q.C. and safety audits both NCTD and Contractor.
 - c. Corrective actions as detailed in Audits (resolve all safety issues)
 - d. Monthly rail current reading report
3. Equipment identification will be required on the following:
 - a. Roller Search Units tagged (Accept or Reject)
 - b. Hand Testing Search Units tagged (Accept or Reject)
 - c. Induction Search Units tagged (Accept or Reject)

03.05 NCTD RESPONSIBILITIES

- A. NCTD is required by the Federal Railroad Administration to perform oversight of its contracted activities in a uniformed and programmed manner and to maintain records of these actions.
- B. NCTD reserves the right to make on-the-spot inspections at any time at its discretion. Omitted work or work considered substandard, or areas not addressed in accordance with the above standards shall be reported to the Contractor who shall correct any deficiency within forty-eight (48) hours of notification without additional cost to NCTD.
- C. NCTD will conduct contract oversight, inspections, tracking and monitoring maintenance schedules, and managing accident, incident, and hazardous condition information. NCTD will provide the Contractor written documentation of all findings. Contractor is expected to work cooperatively with NCTD to resolve any finding. Such oversight and inspections shall not excuse deficient Work and shall not relieve the Contractor of any obligations under the Agreement.
- D. In the event the Work is not carried out to the satisfaction of NCTD, NCTD's representative shall discuss the matter with the Contractor's representative for an equitable adjustment in the billing for the services by an amount equal to the costs required to correct the deficiency as determined by NCTD. Such adjustments shall not excuse deficient Work and shall not relieve the Contractor of any obligations under the Agreement.
- E. NCTD may employ persons or Contractors/consultants other than Contractor's employees to perform functions including quality assurance, contract monitoring, and facility consulting. NCTD's use of these persons for such duties will not relieve Contractor from performing its contractual requirements. NCTD reserves the right to conduct quality assurance reviews of Contractor's practices. Contractor shall remedy any NCTD quality assurance findings resulting from these reviews within ten (10) business days and in accordance with NCTD's written corrective action correspondence. Such work by third parties shall not excuse deficient Work and shall not relieve the Contractor of any obligations under the Agreement.
- F. NCTD may expand its services or enter into new agreements for facilities and/or to modify existing facilities. Throughout the duration of the Agreement, Contractor shall not place any limitations on NCTD entering into expanded services or new agreements. Contractor shall make good faith efforts to coordinate with other contractors providing services to NCTD with the goal of maximizing facilities and equipment maintenance service performance. Contractor shall maintain communications with all other NCTD Contractors and shall initiate attempts to resolve all issues.

03.06 PERIOD OF PERFORMANCE

Ultrasonic Rail Testing

The initial time-period of performance shall be for four (4) years with one (1) optional three (3) year extension.

Once testing has begun on the NCTD system it will be continued until completed, without interruption unless due to equipment failure emergencies that require the relocation of the testing equipment to perform repairs.

03.07 DELIVERABLES, REPORTS, AND NOTIFICATIONS

- A. Contractor shall be required to create and implement the deliverables specified as part of the Agreement. The deliverables are all subject to NCTD's review and written approval prior to implementation by Contractor. The deliverables include, but are not limited to:
 - 1. Contractor Testing Plan (due within thirty (30) days of the Notice to Proceed) to include: Contractor safety plan, quality oversight, and track testing procedures.

ATTACHED REFERENCES

Appendix A: NCTD Standard Operating Procedure 3000.24 General and Housekeeping Safety
Appendix B: NCTD Standard Operating Procedure 3000.66 Personal Electronic Device
Appendix C: NCTD Standard Operating Procedure 3000.01 Use of On-Track Equipment by Third Party Contractors

END OF SECTION

SECTION 04: INSURANCE

Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Work hereunder and the results of that work by the Contractor, its agents, representatives, employees, or subcontractors. Commercial general liability, workers' compensation, employer's liability, and automobile liability coverage are required. All required insurance types and limits are included in attached Agreement sample and should be reviewed carefully by Bidder, its risk personnel, and insurance carrier(s) prior to bidding.

Prior to Agreement award, Contractor shall be required to submit Certificates of Insurance with the limits specified in the Agreement via PlanetBids using the My Insurance feature. If you need assistance with this, please click on the Help Center (top right) in PlanetBids to see instructions. If further assistance is needed enter a support ticket with PlanetBids or call it directly for assistance.

END OF SECTION

SECTION 05: GENERAL CONDITIONS

5.01 AGREEMENT DOCUMENTS

All rights and obligations of NCTD and the Contractor are fully set forth and described in the Agreement Documents. All parts of the Agreement Documents are intended to be correlated so that any Work called for in one part and not mentioned in the other, and vice versa, is to be executed the same as if mentioned in all said documents. The individual documents comprising the Agreement Documents are complementary, and indicate the prosecution and completion of the Work. Anything mentioned in the specifications and not shown on the Agreement Documents, or shown on any drawings and not mentioned in the Scope of Work, shall be of like effect as if shown or mentioned in both. The intent of the Agreement Documents is to include all items necessary for the proper execution and completion of the project.

5.02 SENSITIVE SECURITY INFORMATION (SSI) – NOT APPLICABLE

5.03 RELATIONSHIP OF PARTIES

Nothing contained herein shall be construed as creating the relationship of employer and employee between NCTD and the Contractor or its subcontractors, agents, or employees. The Contractor shall perform its services as an independent contractor in accordance with its own methods, this Agreement, and applicable laws and regulations. The Contractor shall have exclusive and complete control over its employees and subcontractors.

5.04 GOVERNING LAW

The law of California shall govern the resolution of any issue arising in connection with the Agreement Documents, including but not limited to, all questions concerning the validity of the Agreement Documents; the authorities of the parties to enter herein; and modifications or amendment thereto; and the rights and obligations of the parties hereunder. The Contractor warrants that in the performance of the Agreement it shall comply with all applicable federal, state and local laws and ordinances and all lawful orders, rules, and regulations thereunder.

The Contractor agrees that the venue for any legal proceeding relating to or concerning the Agreement Documents is San Diego County, California.

5.05 PUBLIC RECORDS ACT/CONFIDENTIALITY OF BIDS

Access to government record is governed by the laws of the State of California under the California Public Records Act (Gov. Code 6250, et seq.) [Act]. Proposal price forms submitted to NCTD in response to this IFB are public records and may, therefore, be disclosed in accordance with the California Public Records Act. Any such proprietary information, trade secrets or confidential commercial and financial information which a Bidder believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not ensure confidentiality.

Bidders shall submit proprietary information, trade secrets or confidential commercial and financial information, which a Proposer believes should be exempted from disclosure, in a separate volume specifically identified and marked as "Confidential", or "Trade Secret", or "Proprietary", or a similar designation.

NCTD will release proposal cost or price forms in response to a Public Records Act request subject to the requirements of California Government Code §§ 6250 et seq., so long as the proposal cost or price form does not contain trade secrets as defined by the Civil Code. Bid price forms submitted to NCTD are public records and may, therefore, be disclosed in accordance with the California Public Records Act.

Bidder agrees to indemnify and defend NCTD in the event NCTD withholds production of Proposers records which Proposer has marked "Confidential", or "Trade Secret", or "Proprietary", or similar

designations, that are responsive to a Public Records Act request pursuant to California Government Code section 6250. et seq. or a Freedom of Information Act request. See attached Public Records Act Indemnification Certificate.

5.06 PREVAILING WAGE MONITORING REQUIREMENTS – SB 854

The State of California requires the payment of prevailing wage rates on all public works (including construction) projects in excess of one thousand dollars (\$1,000) pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California. In addition to the payment of prevailing wage the contractor must comply with all applicable Department of Industrial Relations (DIR) registration and reporting requirements of SB 854 as may be amended from time to time.

No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded an agreement for public work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the DIR. Contractor and its subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement) and NCTD's labor compliance consultant, Gafcon.

For additional information on the DIR prevailing wage monitoring requirements – SB 854 see the following website: <http://www.dir.ca.gov/Public-Works/SB854.html>

5.07 FEDERAL REQUIREMENTS

All contractual provisions required by the Department of Transportation, as set forth in FTA Circular 4220.1F, must be in all of Contractor's subcontracts. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NCTD requests which would cause NCTD to be in violation of the FTA terms and conditions.

Inasmuch as the services herein described are to be purchased with Federal assistance authorized by the Department of Transportation and Federal Transit Administration (FTA) laws and regulations codified at 49 USC § 5301 et seq.; or the Infrastructure Investment and Jobs Act of 2021, Public Law No. 117-58, November 15, 2021; or Title 23, United States Code (Highways); or the Transportation Equity Act for the 21st Century, Pub. L. 105-178, June 9, 1998, 23 USC § 101 note, as amended by the TEA-21 Restoration Act, Pub. L., 105-206, July 22, 1998, 23 USC § 101 note, (TEA-21), Moving Ahead for Progress in the 21st Century Act (MAP 21), Pub. L. 112-141, July 6, 2012, and other further amendments thereto, Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94 , as may be amended, or other Federal enabling laws administered by FTA and guidance thereto, including without limitation FTA Circular 4220.1F and amendments thereto, and 2 CFR Part 200, the Contractor will be required to comply with all terms and conditions prescribed for third party contract in a grant contract between the United States Department of Transportation and NCTD and to flow all applicable federal provisions down to subcontractors at every tier. Federal provisions applicable to this Agreement and third party contracting in general and Federal Davis-Bacon Wage Requirements are provided in exhibits hereto.

Specific guidelines shall be those prescribed by "Federal Transit Administration Master Agreement" (Form FTA-MA) 49 C.F.R., Part 18, Federal Transit Administration (FTA) Circular 4220.1 F, and 49 CFR Part 200. If a conflict between FTA Circular 4220.1F and 2 CFR Part 200 occurs, 2 CFR Part 200 controls and supersedes.

5.08 INTEREST OF MEMBERS OF CONGRESS

In accordance with 18 U.S.C. 431, no member of, or delegates to, the Congress of the United States shall be admitted to a share or part of this IFB, any resulting agreements, or to any benefit arising therefrom.

5.09 INTEREST OF MEMBERS OF PUBLIC AGENCY

No member, officer, or employee of NCTD or of a local public body during their tenure or one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Contractor's representative attests by submitting a bid that to their knowledge, no Board member, officer or employee of NCTD has any interest, whether contractual, non-contractual, and financial or otherwise in this transaction, and that if Contractor becomes aware of any such interest at any time, a full and complete disclosure of all such information will be made in writing to NCTD.

5.10 FRAUD

The Contractor certifies and affirms through execution of a False Claims Certificate, contained in this solicitation, the truthfulness and accuracy of any statement it has made, it makes, it may make or causes to be made, pertaining to the underlying agreement or the FTA-assisted project for which this agreement work is being performed. In addition to other penalties that may be applicable, the contractor further acknowledges that if it makes, or causes to be made, a false or fictitious, or fraudulent claim, statement, or submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two (2) clauses in each subcontractor agreement financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

The Contractor acknowledges that NCTD has the right to revoke acceptance if it was deceived into an acceptance by fraud. Fraud involves an intentional deceit or falsehood. Acceptance due to fraud may be revoked even if the defect was patent.

5.11 CONTRACTOR SAFETY TRAINING AND RWP TRAINING

The Federal Railroad Administration (FRA) requires railroads to provide Railway Worker Protection (RWP) training to any worker whose job duties include inspection, construction, maintenance, or repair of track, bridges, roadway, signal and communication systems, roadway facilities, or maintenance machinery on or near the track (FRA 49 CFR 214). Contractor shall be responsible for requesting / scheduling RWP and the costs associated with attending the class.

For further information and the cost to attend RWP training go to the NCTD website: <http://www.gonctd.com/working-around-the-rails>

5.12 BUSINESS ETHICS EXPECTATIONS

During the performance of the Agreement, Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the dealings with NCTD.

Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with NCTD's best interests. These obligations shall apply to the activities of Contractor employees, agents, Subcontractors, material suppliers (or their representatives), etc. **The Contractor is responsible for implementing and maintaining an internal compliance program to ensure compliance with**

Agreement Documents requirements and to monitor business ethics and potential conflicts of interest.

Contractor's employees, agents, subcontractors, material suppliers (or their representatives) should not make or provide to be made any employment, gifts, entertainment, liquor, lodging, travel, food, and tickets to public functions (sports events, theater, etc.), payments, loans, free work, substantially discounted work, or other considerations to NCTD representatives, employees or their relatives. Similarly, Contractor's employees, agents or subcontractors (or their relatives) should not receive any commissions, gifts, entertainment, payments, loans, free work, substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with any work performed under the Agreement.

Contractor agrees to notify the NCTD's Compliance Officer, within forty-eight (48) hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this section.

Upon request by NCTD, Contractor agrees to provide a certified Management Representation Letter executed by Contractor representatives in a form agreeable to NCTD stating that they are not aware of any situations violating the business ethics expectations outlined in this agreement or any similar potential conflict of interest situations.

Contractor shall permit interviews of employees, reviews and audits of accounting or other records by NCTD representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Contractor employees, agents, representatives, vendors, Subcontractors, and other third parties paid by Contractor in their relations with NCTD's current or former employees or employee relatives.

Contractor agrees to include this clause in all agreements with Subcontractors and payees receiving more than ten thousand dollars (\$10,000) in funds in connection with the work of NCTD.

5.13 ENTITY(IES) ASSOCIATED WITH THE PROJECT

The entity(ies) listed below has been associated with the development and/or the preparation of this IFB and the name(s) is provided for informational purposes only. This is not intended to be relied on for purposes of compliance with any conflict of interest rules or applicable laws or regulations affecting this IFB. Bidders are solely responsible for due diligence in identifying and avoiding all potential conflicts of interest related to contracting for, and performing the services as required by, this IFB and resulting Agreement.

- None

5.14 PERFORMANCE OF WORK ON NCTD PROPERTY

NCTD is committed to maintaining a safe and respectful environment at all its facilities and properties for the benefit of its employees, customers, business partners, and visitors. To support that goal, NCTD requires that the Contractor adhere to reasonable standards of conduct while working on or in NCTD facilities and property. Additionally, use of any NCTD systems, tools, or physical assets must likewise be in accordance with established requirements. Specific areas of compliance include but are not limited to:

- NCTD Identification Badges – For safety and security purposes the Contractor must comply with NCTD requirements regarding utilization of Identification Badges while on/in NCTD properties/facilities as requested by NCTD staff.
- No Discrimination/Harassment – Employees of the Contractor are expected to conduct themselves in a professional, ethical, and respectful manner at all times, and refrain from any conduct or actions which could constitute harassment or discrimination towards employees, customers, business partners, visitors.
- Drug/ Alcohol – The Contractor shall maintain compliance with NCTD's status as a Drug Free Workplace.
- Electronic Systems – a Contractor who utilizes NCTD electronic systems, including computers, telephones, facsimile machines, etc., shall ensure it is utilized solely for business purposes related to

direct fulfillment of agreed services. Additionally, the Contractor shall comply with any instructions or requirements of NCTD Information Technology staff related to use of said systems.

Based upon individual agreement parameters, solely in NCTD's determination, the Contractor may be required to provide additional information to NCTD to ensure compliance with the foregoing items, and/or other reasonable business and operational needs.

5.15 SOCIAL MEDIA

Bidders or the Contractor is prohibited from using any social media to reference any ongoing bid or solicitation process without NCTD's express written permission. Additional terms may be included in the Agreement for any additional requirements or obligations.

5.16 PERFORMANCE AND STANDARDS

The Contractor warrants to NCTD that all materials and equipment furnished under the awarded Agreement will be of highest quality and new unless otherwise specified by NCTD, free from faults and defects and in conformance with the Agreement documents. All materials and equipment not so conforming to these standards shall be considered defective. If required by NCTD's designated representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

5.17 PROMPT PAYMENT

The Contractor shall make prompt payment of all monies due and owed to DBE and non-DBE firms within 7 business days upon receipt of payment from North County Transit District (NCTD) as per Agreement. Payment of retention shall be made to all DBE and non-DBE subcontractors within 10 days after satisfactory completion of the subcontracted work. The Contractor shall utilize the PlanetBids "My Contracts" portal to report monthly subcontractor payment reports during the reporting month. Contractor(s) shall ensure that their subcontractors are added into the PlanetBids "MyContracts" portal once the Agreement has been awarded. Contractors shall submit a monthly subcontractor payment report on the PlanetBids "MyContracts" portal by the 20th of each month following the end of the reporting month and should reflect all payments made to subcontractor(s) through the last day of the previous month, even if the subcontractor(s) did not perform any work. Contractor shall ensure that its subcontractor(s) use the PlanetBids "MyContracts" portal to verify the payment amounts the Contractor submitted by the 25th of each month following the end of the reporting month. In order for the Contractor to submit a properly executed monthly subcontractor payment report, the Contractor must verify that their subcontractors' DBE certification is current at the time of payment. Certified Contractors can be found at the following State of California website: [Caltrans - Disadvantaged Business Enterprise System \(dbesystem.com\)](http://Caltrans - Disadvantaged Business Enterprise System (dbesystem.com))

The Contractor or subcontractor shall pay to any subcontractor for the satisfactory performance of their contracts not later than 10-days of receipt of each progress payment, in accordance with 49 CFR 26.29 and Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 10-days may take place only for good cause and with NCTD's prior written approval. Any violation of 49 CFR 26.29 or Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. 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 noncompliance by a subcontractor.

In addition, for projects that invoice only at the completion of the project, within seven (7) days of the Contractor's receipt of released retention from NCTD upon completion of the project as defined in California Public Contract Code section 7107, the Contractor shall pay each of its subcontractors from whom retention has been withheld each subcontractor's share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by NCTD, the Contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the

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retention received, in accordance with the provisions of California Public Contract Code section 7107. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and California Public Contract Code section 7107. 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 noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

The Construction Manager/Project Manager shall notify the Project Manager and Contract Officer immediately if the Contractor fails to meet any of the requirements of the Fabrication, Inspection and Test Plan, or at any time the Construction Manager/Project Manager determines that the work performed is substandard. The Project Manager is responsible to determine the course of action to be taken by NCTD upon notification from the Construction Manager/Project Manager.

Disputes between the Contractor and any lower tier DBE subcontractors, which cannot be settled by discussions between the parties involved, shall be settled as described herein. Contractor shall notify NCTD in writing of such dispute within ten (10) days of failure to resolve. If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact NCTD's Disadvantaged Business Enterprises Liaison Officer (DBELO) to initiate a complaint. NCTD's DBELO will coordinate meeting requests to assist in the resolution of disputes between Contractor and subcontractor. The assigned NCTD representative will conduct the resolution meetings with parties in dispute. All parties must agree to the procedure. If filing a prompt payment complaint with NCTD's DBELO does not result in timely and meaningful action by NCTD to resolve prompt payment disputes, affected subcontractor may contact the responsible Federal Transit Administration contact. The Contractor and Subcontractors shall include the dispute resolution provision in their contract.

5.18 PERFORMANCE AND PAYMENT BONDING REQUIREMENTS:

The Bidder shall be required, at the time of execution of the Agreement, to furnish a Performance Bond and Payment (Labor and Material) Bond that guarantees performance and payment with respect to all provisions of the Agreement Documents. The bonds shall be in the form required in the Section entitled Submission Documents, signed by Contractor as Principal and by an established reputable bonding or insurance company as surety, in the penal sum of 100 percent (100%) of the bid amount on the Bonds. The Performance and Payment Bonds must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure Section 995.120. In addition, to the extent required by law, the Bonds must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of San Diego that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California.

The Contractor warrants to NCTD, the Architect and/or Engineer that all materials and equipment furnished under the awarded Agreement will be of highest quality and new unless otherwise specified by NCTD, free from faults and defects and in conformance with the Agreement Documents. All materials and equipment not so conforming to these standards shall be considered defective. If required by NCTD's designated representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor warrants the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by NCTD and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the warranty at no cost to NCTD or reimburse NCTD upon demand, for its expenses incurred in restoring said Work to the condition contemplated in said Agreement, including the cost of any such equipment or materials replaced and the cost of removing

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and replacing any other work necessary to make such replacement or repairs. The agency shall have the unqualified option to make any needed replacements or repairs itself or to have such replacements or repairs done by the Contractor. In the event NCTD elects to have said work performed by the Contractor, the Contractor agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from NCTD. If the Contractor fails or refuses to comply with its obligations under this warranty, NCTD shall be entitled to all costs and expenses, including attorney's fees and expert costs reasonably incurred by reason of the said failure or refusal.

As additional security for these warranties, the Contractor shall, prior to the release of Final Payment as provided in the PAYMENTS clause of the IFB, furnish separate Maintenance Bonds in the form contained in this section to NCTD written ***by the same corporate surety that provides the Performance Bond and Payment Bond (Labor and Material) for this Agreement.*** These bonds shall secure the Contractor obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to one hundred percent (100%) of the Agreement amount, as adjusted (if at all).

5.19 TITLE AND LIABILITY FOR GOODS – NOT APPLICABLE

END OF SECTION

SECTION 06: SPECIAL CONDITIONS

FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES

It is the responsibility of the Contractor to ensure that all clauses applicable to the Work of the Agreement are adhered to by the Contractor and its subcontractors when applicable.

Sec.	Contract Clause	APPLICABILITY TO TYPE OF PROCUREMENT
		Professional Services
1	No Federal Government Obligation to Third Parties by Use of a Disclaimer	All
2	Program Fraud and False or Fraudulent Statements and Related Acts	All
3	Access to Records	All
4	Federal Changes	All
5	Civil Rights (EEO, Title VI & ADA)	All
6	Disadvantaged Business Enterprises (DBE)	All
7	Incorporation of FTA Terms	All
8	Termination Provisions	> 10K
9	Debarment and Suspension	> 25K
10	Provisions for Resolution of Disputes, Breaches, and Other Litigation	> 100K
11	Lobbying	> 100K
12	Clean Air	> 100K
13	Clean Water	> 100K
14	Fly America	All
18	Davis-Bacon and Copeland Anti-Kickback Acts	All
16	Safe Operation of Motor Vehicles	All
17	Privacy Act	All
18	Notice of Legal Matters that Affect the Federal Government	>\$25,000
19	Federal Tax Liability and Recent Felony Convictions	All
20	Promoting Free Speech and Religious Liberty	All

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES BY USE OF A DISCLAIMER

Applicability to Contracts: Applicable to all contracts.

Flow down Requirements: This section flows down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

No Obligation by the Federal Government.

(1) NCTD and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to NCTD, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 31

18 U.S.C. 1001

49 U.S.C. 5307

Applicability to Contracts: These requirements are applicable to all contracts.

Flow down Requirements: These requirements flow down to Contractor and its subcontractors who make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two (2) clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. ACCESS TO RECORDS

49 U.S.C. 5325

18 CFR 18.36(i)

49 CFR 633.17

Applicability to Contracts: Reference Chart "Requirements for Access to Records and Reports by Type of Contracts", Item 6 of this Section.

Flow down Requirements FTA does not require the inclusion of these requirements in subcontracts.

Access to Records - The following access to records requirements apply to this contract:

(1) The Contractor agrees to provide NCTD, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits,

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Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ¹	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/ Capital Projects	Yes ¹		Yes	Yes	Yes	Yes

examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or their authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311

(2) Where NCTD or a sub-grantee of NCTD in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) through other than competitive bidding, the Contractor shall make available records related to the contract to NCTD, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(3) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(4) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until NCTD, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

(5) FTA does not require the inclusion of these requirements in subcontracts.

(6) Requirements for Access to Records and Reports by Types of Contract
Sources of Authority: ¹ 18 CFR 18.36 (i)

4. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts: The Federal Changes requirement applies to all contracts.

Flow down Requirements: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between NCTD and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. CIVIL RIGHTS (EEO, TITLE VI & ADA)

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

See section entitled - “Civil Rights and Disadvantaged Business Enterprise Requirements,” of this solicitation.

6. DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND PROMPT PAYMENT

49 CFR Part 26

Section 1101(b) of MAP-21 (23 U.S.C. § 101 note)

See sections entitled – “Civil Rights and Disadvantaged Business Enterprise Requirements,” and “Prompt Payment” in this solicitation.

7. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

Applicability to Contracts: The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

Flow Down Requirements The incorporation of FTA terms has unlimited flow down.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NCTD requests which would cause NCTD to be in violation of the FTA terms and conditions.

8. TERMINATION PROVISIONS

49 CFR Part 18

FTA Circular 4220.1F

See section entitled, “Termination,” in the Agreement.

9. DEBARMENT AND SUSPENSION

49 CFR 18

2 CFR 1200

2 CFR 180

Executive Orders 12549 and 12689

31 U.S.C. 6101

Background and Applicability: In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by Contractor, a subcontractor, supplier, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180). This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

These provisions apply to all NCTD contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services.

These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with

is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System (EPLS), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract.

Contractor or subcontractors who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Flow down Requirements: These requirements flow down to Contractor and subcontractors at all levels.

Suspension and Debarment: This contract is a covered transaction for purposes of 49 CFR Part 18. As such, the Contractor is required to verify that none of the Contractor, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The Contractor is required to comply with 2 CFR 1200 and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the Firm certifies as follows:

The certification in this clause is a material representation of fact relied upon by NCTD. If it is later determined that the Firm knowingly rendered an erroneous certification, in addition to remedies available to NCTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Firm agrees to comply with the requirements 2 CFR 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The Firm further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. PROVISIONS FOR RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

49 CFR Part 18 FTA Circular 4220.1F

Applicability to Contracts: All contracts in excess of \$100,000 shall contain provisions or conditions that will allow for administrative, contractual, or legal remedies in instances where Contractor violates or breaches contract terms and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down Requirements: The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NCTD. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the NCTD. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of NCTD shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by NCTD, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the NCTD and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the NCTD is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by NCTD or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

11. LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts: The Lobbying requirements apply to all contracts exceeding \$100,000.
Flow Down Requirements The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7. **Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to NCTD.

12. CLEAN AIR

42 U.S.C. 7401 – 7601(q)
40 CFR 15.61
49 CFR Part 18

Applicability to Contracts: The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow down Requirements: The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7601(q) et seq. The Contractor agrees to report each violation to NCTD and understands and agrees that NCTD, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13. CLEAN WATER

33 U.S.C. 1251 - 1377

Applicability to Contracts: The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow down Requirements: The Clean Water Act requirements flow down to Contractor and its contracts at every tier.

Clean Water - (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. 1251 – 1377 et seq.

(b) The Contractor agrees to report each violation to NCTD and understands and agrees that NCTD will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368

(c) The Contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f – 300j-6.

(d) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

14. FLY AMERICA

49 U.S.C. §40118
41 CFR Part 301-10.131 - 301-10.143

Applicability to Contracts: The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the

ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow down Requirements: The Fly America requirements flow down from NCTD to Contractor, who is responsible for ensuring that lower tier contractors are in compliance.

Fly America - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10.131 - 301-10.143, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

15. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

49 U.S.C. 5333

40 U.S.C. 3141 – 3144

40 U.S.C. 3146 – 3147

18 U.S.C. 874

40 U.S.C. 3145

Applicability to Contracts: The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 FR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

Flow down Requirements: Applies to Contractor and its subcontractors at every tier.

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than Monthly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one (1) classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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(ii)(A) The Contract Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contract Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n) (4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n) (4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contract Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contract Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and shall advise the Contract Officer or will notify the Contract Officer within the thirty (30) day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contract Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contract Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contract Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and shall advise the Contract Officer or will notify the Contract Officer within the thirty (30) day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The Contract Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contract Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contract Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contract Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the Contract Officer or will notify the Contract Officer within the thirty (30) day period that additional time is necessary.

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(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contract Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contract Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contract Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and shall advise the Contract Officer or will notify the Contract Officer within the thirty (30) day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - NCTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, NCTD may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to NCTD for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the

full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or Contractor who has an interest in the Contractor's contract is a person or contractor ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or Contractor ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the Contract Officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District

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or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the Contract Officer to insert a clause requiring that the Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the Contract Officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

OMB Control Number
(a)(1)(ii)(B) 1215-0140
(a)(1)(ii)(C) 1215-0140
(a)(1)(iv) 1215-0140
(a)(3)(i) 1215-0140,
1215-0017
(a)(3)(ii)(A) 1215-0149
(c) 1215-0140,
1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

16. SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. § 402
U.S. DOT Order 3902.10

Applicability to Contracts: Applicable to all contracts.

Flow down Requirements: The Safe Operations of Motor Vehicles extends to Contractor and its contracts at every tier and, sub-recipients and their sub-agreements at every tier.

Seat Belt Use.

The Contractor agrees to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles;

Distracted Driving, Including Text Messaging While Driving.

(i) **Safety.** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award;

(ii) **Contractor Size.** The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

17. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts: When NCTD maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow down Requirements: The Federal Privacy Act requirements flow down to Contractor and its contracts at every tier.

Contracts Involving Federal Privacy Act Requirements: The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

18. NOTICE OF LEGAL MATTERS

2 C.F.R. §§ 180.220(b)-(c)

Applicability to Contracts: The Notice of Legal Matters requirements apply to all contracts covered under 2 C.F.R. §180.220 and 1200.220 and the amount of the contract is expected to equal or exceed \$25,000.

Flow down Requirements: The Notice of Legal Matters requirements flow down to Contractor and its contracts at every tier as permitted under OMB guidance at 2 C.F.R. 180.220(c).

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor agrees to promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Contractor must include a similar notification requirement in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

19. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

Applicability to Contracts: Applicable to all contracts.

Flow down Requirements: The Federal Tax Liability and Recent Felony Convictions prohibition extends to Contractor and its contracts at every tier and, sub-recipients and their sub-agreements at every tier.

(1) Transactions Prohibited.

(i) The Recipient agrees that, prior to entering into any Third Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third Party Participant a certification that the Third Party Participant—

(A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

(ii) If the prospective Third Party Participant cannot so certify, the Recipient agrees to refer the matter to FTA and not to enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

20. PROMOTING FREE SPEECH AND RELIGIOUS LIBERTY

Applicability to Contracts: Applicable to all contracts.

Flow down Requirements: These requirements have unlimited flow down.

Promoting Free Speech and Religious Liberty. The Consultant agrees to ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

END OF SECTION

SECTION 07: DAVIS-BACON PREVAILING WAGE DETERMINATIONS

"General Decision Number: CA20220001 12/16/2022

Superseded General Decision Number: CA20210001

State: California

Construction Types: Building, Heavy (Heavy and Dredging), Highway and Residential

County: San Diego County in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS; RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658.

Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered	. Executive Order 14026
into on or after January 30,	generally applies to the
2022, or the contract is	contract.
renewed or extended (e.g., an	. The contractor must pay

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option is exercised) on or after January 30, 2022:	all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or all extended on or after January 30, 2022: listed determination,	. Executive Order 13658 generally applies to the contract. . The contractor must pay covered workers at least \$11.25 per hour (or the applicable wage rate on this wage if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be

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adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	01/14/2022
2	01/21/2022
3	02/11/2022
4	02/25/2022
5	04/01/2022
6	04/29/2022
7	07/22/2022
8	07/29/2022
9	08/05/2022
10	08/19/2022
11	09/02/2022
12	09/30/2022
13	10/07/2022
14	10/14/2022
15	10/21/2022
16	11/04/2022
17	12/09/2022
18	12/16/2022

ASBE0005-002 07/04/2022

Rates

Fringes

Asbestos Workers/Insulator
(Includes the application of all insulating materials, protective coverings, coatings, and finishes to all

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types of mechanical systems).....\$ 49.58	25.27
Fire Stop Technician (Application of Firestopping Materials for wall openings and penetrations in walls, floors, ceilings and curtain walls).....\$ 32.09	19.66

ASBE0005-004 07/04/2022

	Rates	Fringes
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Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not)....\$ 23.52	13.37
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BOIL0092-003 01/01/2021

	Rates	Fringes
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BOILERMAKER.....\$ 46.03	38.81
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BRCA0004-008 11/01/2022

	Rates	Fringes
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BRICKLAYER; MARBLE SETTER.....\$ 44.65	19.00
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* BRCA0018-004 06/01/2022

	Rates	Fringes
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MARBLE FINISHER.....\$ 37.87	14.13
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TILE FINISHER.....	\$ 32.44	12.54
TILE LAYER.....	\$ 45.05	18.33

* BRCA0018-010 09/01/2022

	Rates	Fringes
TERRAZZO FINISHER.....	\$ 38.37	14.13
TERRAZZO WORKER/SETTER.....	\$ 46.49	14.66

CARP0213-003 07/01/2021

	Rates	Fringes
Drywall		
(1) Work on wood framed construction of single family residences, apartments or condominiums under four stories		
Drywall Installer/Lather....	\$ 32.14	16.28
Drywall Stocker/Scrapper....	\$ 22.16	8.62

CARP0619-002 07/01/2021

	Rates	Fringes
Drywall		
(2) All other work		
Drywall Installer/Lather....	\$ 42.80	16.28
Drywall Stocker/Scrapper....	\$ 23.07	8.62

CARP0619-003 07/01/2021

	Rates	Fringes
CARPENTER		
(1) Bridge.....	\$ 51.53	16.28
(2) Commercial Building....	\$ 46.30	16.28
(3) Heavy & Highway.....	\$ 51.40	16.28

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(4) Residential Carpenter..	\$ 38.47	16.28
(5) Residential Insulation Installer.....	\$ 24.16	15.76
PILEDRIVERMAN.....	\$ 51.53	16.28

CARP0619-004 07/01/2021

	Rates	Fringes
Diver		
(1) Wet.....	\$ 831.20	16.28
(2) Standby.....	\$ 444.24	16.28
(3) Tender.....	\$ 436.24	16.28
(4) Assistant Tender.....	\$ 412.24	16.28

Amounts in "'Rates' column are per day

CARP0721-001 07/01/2021

	Rates	Fringes
Modular Furniture Installer.....	\$ 21.85	7.15

CARP1607-004 07/01/2021

	Rates	Fringes
MILLWRIGHT.....	\$ 51.90	16.48

ELEC0569-001 06/01/2021

	Rates	Fringes
Electricians (Tunnel Work)		
Cable Splicer.....	\$ 54.36	3%+14.88
Electrician.....	\$ 53.61	3%+14.88
Electricians: (All Other Work, Including 4 Stories Residential)		
Cable Splicer.....	\$ 48.40	3%+14.88

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Electrician.....\$ 47.65 3%+14.88

ELEC0569-004 06/01/2021

Rates Fringes

ELECTRICIAN (Sound & Communications Sound Technician).....\$ 35.20 13.84
SCOPE OF WORK Assembly, installation, operation, service and maintenance of components or systems as used in closed circuit television, amplified master television distribution, CATV on private property, intercommunication, burglar alarm, fire alarm, life support and all security alarms, private and public telephone and related telephone interconnect, public address, paging, audio, language, electronic, background music system less than line voltage or any system acceptable for class two wiring for private, commercial, or industrial use furnished by leased wire, frequency modulation or other recording devices, electrical apparatus by means of which electricity is applied to the amplification, transmission, transference, recording or reproduction of voice, music, sound, impulses and video. Excluded from this Scope of Work - transmission, service and maintenance of background music.
All of the above shall include the installation and transmission over fiber optics.

ELEC0569-005 06/01/2021

Rates Fringes

Sound & Communications

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Sound Technician.....\$ 35.20 13.84
SCOPE OF WORK Assembly, installation, operation, service and maintenance of components or systems as used in closed circuit television, amplified master television distribution, CATV on private property, intercommunication, burglar alarm, fire alarm, life support and all security alarms, private and public telephone and related telephone interconnect, public address, paging, audio, language, electronic, background music system less than line voltage or any system acceptable for class two wiring for private, commercial, or industrial use furnished by leased wire, frequency modulation or other recording devices, electrical apparatus by means of which electricity is applied to the amplification, transmission, transference, recording or reproduction of voice, music, sound, impulses and video. Excluded from this Scope of Work - transmission, service and maintenance of background music.
All of the above shall include the installation and transmission over fiber optics.

SOUND TECHNICIAN: Terminating, operating and performing final check-out

ELEC0569-006 06/06/2022

Work on street lighting; traffic signals; and underground systems and/or established easements outside of buildings

	Rates	Fringes
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Traffic signal, street light and underground work

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Utility Technician #1.....	\$ 38.67	9.11
Utility Technician #2.....	\$ 30.10	8.85

STREET LIGHT & TRAFFIC SIGNAL WORK:

UTILITY TECHNICIAN #1: Installation of street lights and traffic signals, including electrical circuitry, programmable controller, pedestal-mounted electrical meter enclosures and laying of pre-assembled cable in ducts. The layout of electrical systems and communication installation including proper position of trench depths, and radius at duct banks, location for manholes, street lights and traffic signals.

UTILITY TECHNICIAN #2: Distribution of material at jobsite, installation of underground ducts for electrical, telephone, cable TV land communication systems. The setting, leveling, grounding and racking of precast manholes, handholes and transformer pads.

 ELEC0569-008 08/30/2021

	Rates	Fringes
ELECTRICIAN (Residential, 1-3 Stories).....	\$ 37.28	7.98

 ELEC1245-001 06/01/2022

	Rates	Fringes
LINE CONSTRUCTION		
(1) Lineman; Cable splicer..	\$ 64.40	22.58
(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes,		

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trenchers, cranes (50 tons and below), overhead & underground distribution line equipment).....	\$ 50.00	21.30
(3) Groundman.....	\$ 38.23	20.89
(4) Powderman.....	\$ 51.87	18.79

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and day after Thanksgiving, Christmas Day

ELEV0018-001 01/01/2022

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 61.34	36.885+a+b

FOOTNOTE:

a. PAID VACATION: Employer contributes 8% of regular hourly rate as vacation pay credit for employees with more than 5 years of service, and 6% for 6 months to 5 years of service.

b. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

* ENGI0012-003 07/01/2022

	Rates	Fringes
OPERATOR: Power Equipment (All Other Work)		
GROUP 1.....	\$ 51.90	30.70
GROUP 2.....	\$ 52.68	30.70
GROUP 3.....	\$ 52.97	30.70

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GROUP 4.....	\$ 54.46	30.70
GROUP 5.....	\$ 48.96	25.25
GROUP 6.....	\$ 54.68	30.70
GROUP 8.....	\$ 54.79	30.70
GROUP 9.....	\$ 49.29	25.25
GROUP 10.....	\$ 54.91	30.70
GROUP 11.....	\$ 49.41	25.25
GROUP 12.....	\$ 55.08	30.70
GROUP 13.....	\$ 55.18	30.70
GROUP 14.....	\$ 55.21	30.70
GROUP 15.....	\$ 55.29	30.70
GROUP 16.....	\$ 55.41	30.70
GROUP 17.....	\$ 55.58	30.70
GROUP 18.....	\$ 55.68	30.70
GROUP 19.....	\$ 55.79	30.70
GROUP 20.....	\$ 55.91	30.70
GROUP 21.....	\$ 56.08	30.70
GROUP 22.....	\$ 56.18	30.70
GROUP 23.....	\$ 56.29	30.70
GROUP 24.....	\$ 56.41	30.70
GROUP 25.....	\$ 56.58	30.70

OPERATOR: Power Equipment
(Cranes, Piledriving &
Hoisting)

GROUP 1.....	\$ 53.25	30.70
GROUP 2.....	\$ 54.03	30.70
GROUP 3.....	\$ 54.32	30.70
GROUP 4.....	\$ 54.46	30.70
GROUP 5.....	\$ 54.68	30.70
GROUP 6.....	\$ 54.79	30.70
GROUP 7.....	\$ 54.91	30.70
GROUP 8.....	\$ 55.08	30.70
GROUP 9.....	\$ 55.25	30.70
GROUP 10.....	\$ 56.25	30.70
GROUP 11.....	\$ 57.25	30.70
GROUP 12.....	\$ 58.25	30.70
GROUP 13.....	\$ 59.25	30.70

OPERATOR: Power Equipment
(Tunnel Work)

GROUP 1.....	\$ 54.53	30.70
GROUP 2.....	\$ 54.82	30.70
GROUP 3.....	\$ 54.96	30.70
GROUP 4.....	\$ 55.18	30.70
GROUP 5.....	\$ 55.29	30.70

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GROUP 6.....	\$ 55.41	30.70
GROUP 7.....	\$ 55.71	30.70

PREMIUM PAY:

\$3.75 per hour shall be paid on all Power Equipment Operator work on the following Military Bases: China Lake Naval Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base, Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics Base Yermo, Edwards AFB, 29 Palms Marine Base and Camp Pendleton

Workers required to suit up and work in a hazardous material environment: \$2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

SEE ZONE DEFINITIONS AFTER CLASSIFICATIONS

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine operator (or similar types); Skiploader (wheel type up to 3/4 yd.

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without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (Skid steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder

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machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter (concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (guniting work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger

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or similar types - Texoma 700, 800 auger or similar types
-
drilling depth of 60' maximum); Elevating grader
operator;
Grade checker; Gradall operator; Grouting machine
operator;
Heavy-duty repairman; Heavy equipment robotics operator;
Kalamazoo balliste regulator or similar type; Kolman belt
loader and similar type; Le Tourneau blob compactor or
similar type; Loader operator (Athey, Euclid, Sierra and
similar types); Mobark Chipper or similar; Ozzie padder
or
similar types; P.C. slot saw; Pneumatic concrete placing
machine operator (Hackley-Presswell or similar type);
Pumpcrete gun operator; Rock Drill or similar types;
Rotary
drill operator (excluding caisson type); Rubber-tired
earth-moving equipment operator (single engine,
caterpillar, Euclid, Athey Wagon and similar types with
any
and all attachments over 25 yds. up to and including 50
cu.
yds. struck); Rubber-tired earth-moving equipment
operator
(multiple engine up to and including 25 yds. struck);
Rubber-tired scraper operator (self-loading paddle wheel
type-John Deere, 1040 and similar single unit); Self-
propelled curb and gutter machine operator; Shuttle
buggy;
Skiploader operator (crawler and wheel type over 1-1/2
yds.
up to and including 6-1/2 yds.); Soil remediation plant
operator; Surface heaters and planer operator; Tractor
compressor drill combination operator; Tractor operator
(any type larger than D-5 - 100 flywheel h.p. and over,
or
similar-bulldozer, tamper, scraper and push tractor
single
engine); Tractor operator (boom attachments), Traveling
pipe wrapping, cleaning and bendng machine operator;
Trenching machine operator (over 6 ft. depth capacity,
manufacturer's rating); trenching Machine with Road Miner
attachment (over 6 ft depth capacity): Ultra high
pressure

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waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types

(Calweld 200 B bucket or similar types-Watson 3000 or 5000

auger or similar types-Textoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator;

Drilling machine operator, bucket or auger types (Calweld,

auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar

with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving

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equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self-loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote-control earth-moving equipment operator (operating a second piece of equipment: \$1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator,

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operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types);

Rubber-tired earth-moving equipment operator, operating in

tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any

and all attachments over 25 yds. and up to and including 50

cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine,

Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator,

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operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and

up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem

push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist

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operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator,

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stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator

(over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including

300 tons mrc); Derrick barge operator (over 200 tons up to

and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator

(over

200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator,

stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum);

Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine

operator; Heading shield operator; Heavy-duty repairperson;

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Loader operator (Athey, Euclid, Sierra and similar types);

Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor

drill combination operator; Tugger hoist operator (2 drum);

Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

ENGINEERS ZONES

\$1.00 additional per hour for all of IMPERIAL County and the portions of KERN, RIVERSIDE & SAN BERNARDINO Counties as defined below:

That area within the following Boundary: Begin in San Bernardino County, approximately 3 miles NE of the intersection of I-15 and the California State line at that point which is the NW corner of Section 1, T17N,m R14E, San Bernardino Meridian. Continue W in a straight line to that point which is the SW corner of the northwest quarter of Section 6, T27S, R42E, Mt. Diablo Meridian. Continue North to the intersection with the Inyo County Boundary at that point which is the NE corner of the western half of the northern quarter of Section 6, T25S, R42E, MDM. Continue W along the Inyo and San Bernardino County boundary until the intersection with Kern County, as that point which is the SE corner of Section 34, T24S, R40E, MDM. Continue W along the Inyo and Kern County boundary until the intersection with Tulare County, at that point which is the SW corner of the SE quarter of Section 32,

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T24S, R37E, MDM. Continue W along the Kern and Tulare County boundary, until that point which is the NW corner of T25S, R32E, MDM. Continue S following R32E lines to the NW corner of T31S, R32E, MDM. Continue W to the NW corner of T31S, R31E, MDM. Continue S to the SW corner of T32S, R31E, MDM. Continue W to SW corner of SE quarter of Section 34, T32S, R30E, MDM. Continue S to SW corner of T11N, R17W, SBM. Continue E along south boundary of T11N, SBM to SW corner of T11N, R7W, SBM. Continue S to SW corner of T9N, R7W, SBM. Continue E along south boundary of T9N, SBM to SW corner of T9N, R1E, SBM. Continue S along west boundary of R1E, SMB to Riverside County line at the SW corner of T1S, R1E, SBM. Continue E along south boundary of T1s, SBM (Riverside County Line) to SW corner of T1S, R10E, SBM. Continue S along west boundary of R10E, SBM to Imperial County line at the SW corner of T8S, R10E, SBM. Continue W along Imperial and Riverside county line to NW corner of T9S, R9E, SBM. Continue S along the boundary between Imperial and San Diego Counties, along the west edge of R9E, SBM to the south boundary of Imperial County/California state line. Follow the California state line west to Arizona state line, then north to Nevada state line, then continuing NW back to start at the point which is the NW corner of Section 1, T17N, R14E, SBM

\$1.00 additional per hour for portions of SAN LUIS OBISPO, KERN, SANTA BARBARA & VENTURA as defined below:

That area within the following Boundary: Begin approximately 5

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miles north of the community of Cholame, on the Monterey County and San Luis Obispo County boundary at the NW corner of T25S, R16E, Mt. Diablo Meridian. Continue south along the west side of R16E to the SW corner of T30S, R16E, MDM. Continue E to SW corner of T30S, R17E, MDM. Continue S to SW corner of T31S, R17E, MDM. Continue E to SW corner of T31S, R18E, MDM. Continue S along West side of R18E, MDM as it crosses into San Bernardino Meridian numbering area and becomes R30W. Follow the west side of R30W, SBM to the SW corner of T9N, R30W, SBM. Continue E along the south edge of T9N, SBM to the Santa Barbara County and Ventura County boundary at that point which is the SW corner of Section 34. T9N, R24W, SBM, continue S along the Ventura County line to that point which is the SW corner of the SE quarter of Section 32, T7N, R24W, SBM. Continue E along the south edge of T7N, SBM to the SE corner to T7N, R21W, SBM. Continue N along East side of R21W, SBM to Ventura County and Kern County boundary at the NE corner of T8N, R21W. Continue W along the Ventura County and Kern County boundary to the SE corner of T9N, R21W. Continue North along the East edge of R21W, SBM to the NE corner of T12N, R21W, SBM. Continue West along the north edge of T12N, SBM to the SE corner of T32S, R21E, MDM. [T12N SBM is a thin strip between T11N SBM and T32S MDM]. Continue North along the East side of R21E, MDM to the Kings County and Kern County border at the NE corner of T25S, R21E, MDM, continue West along the Kings County and Kern

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County Boundary until the intersection of San Luis Obispo County. Continue west along the Kings County and San Luis Obispo County boundary until the intersection with Monterey County. Continue West along the Monterey County and San Luis Obispo County boundary to the beginning point at the NW corner of T25S, R16E, MDM.

\$2.00 additional per hour for INYO and MONO Counties and the Northern portion of SAN BERNARDINO County as defined below:

That area within the following Boundary: Begin at the intersection of the northern boundary of Mono County and the California state line at the point which is the center of Section 17, T10N, R22E, Mt. Diablo Meridian. Continue S then SE along the entire western boundary of Mono County, until it reaches Inyo County at the point which is the NE corner of the Western half of the NW quarter of Section 2, T8S, R29E, MDM. Continue SSE along the entire western boundary of Inyo County, until the intersection with Kern County at the point which is the SW corner of the SE 1/4 of Section 32, T24S, R37E, MDM. Continue E along the Inyo and Kern County boundary until the intersection with San Bernardino County at that point which is the SE corner of section 34, T24S, R40E, MDM. Continue E along the Inyo and San Bernardino County boundary until the point which is the NE corner of the Western half of the NW quarter of Section 6, T25S, R42E, MDM. Continue S to that point which is the SW corner of the NW quarter of Section 6, T27S, R42E, MDM.

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Continue E in a straight line to the California and Nevada state border at the point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Then continue NW along the state line to the starting point, which is the center of Section 18, T10N, R22E, MDM.

REMAINING AREA NOT DEFINED ABOVE RECIEVES BASE RATE

ENGI0012-004 08/01/2020

	Rates	Fringes
OPERATOR: Power Equipment (DREDGING)		
(1) Leverman.....	\$ 56.40	30.00
(2) Dredge dozer.....	\$ 50.43	30.00
(3) Deckmate.....	\$ 50.32	30.00
(4) Winch operator (stern winch on dredge).....	\$ 49.77	30.00
(5) Fireman-Oiler, Deckhand, Bargeman, Leveehand.....	\$ 49.23	30.00
(6) Barge Mate.....	\$ 49.84	30.00

IRON0229-001 01/01/2022

	Rates	Fringes
IRONWORKER		
Fence Erector.....	\$ 39.83	25.31
Ornamental, Reinforcing and Structural.....	\$ 44.75	33.95

PREMIUM PAY:

\$6.00 additional per hour at the following locations:

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China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland, Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

\$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

\$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

 LABO0089-001 07/01/2022

	Rates	Fringes
LABORER (BUILDING and all other Residential Construction)		
Group 1.....	\$ 37.68	22.44
Group 2.....	\$ 38.37	22.44
Group 3.....	\$ 39.12	22.44
Group 4.....	\$ 39.98	22.44
Group 5.....	\$ 41.60	22.44
LABORER (RESIDENTIAL CONSTRUCTION - See definition below)		
(1) Laborer.....	\$ 35.58	20.77
(2) Cleanup, Landscape, Fencing (Chain Link & Wood).	\$ 34.29	20.77

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RESIDENTIAL DEFINITION: Wood or metal frame construction of single family residences, apartments and condominiums - excluding (a) projects that exceed three stories over a garage level, (b) any utility work such as telephone, gas, water, sewer and other utilities and (c) any fine grading work, utility work or paving work in the future street and public right-of-way; but including all rough grading work at the job site behind the existing right of way

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete Screeding for Rought Strike-off; Concrete, water curing; Demolition laborer; Flagman; Gas, oil and/or water pipeline laborer; General Laborer; General clean-up laborer; Landscape laborer; Jetting laborer; Temporary water and air lines laborer; Material hoseman (walls, slabs, floors and decks); Plugging, filling of Shee-bolt holes; Dry packing of concrete; Railroad maintenance, Repair Trackman and road beds, Streetcar and railroad construction trac laborers; Slip form raisers; Slurry seal crews (mixer operator, applicator operator, squeegee man, Shuttle man, top man), filling of cracks by any method on any surface; Tarman and mortar man; Tool crib or tool house laborer; Window cleaner; Wire Mesh puling-all concrete pouring operations

GROUP 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute man, pouring concrete, the handling of the cute from ready mix trucks, such as walls, slabs, decks, floors, foundations, footings, curbs, gutters and sidewalks; Concrete curer-impervious membrane and form oiler; Cutting torch operator (demoliton); Guinea chaser; Headboard man-asphlt; Laborer,

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packing rod steel and pans; membrane vapor barrier installer;

Power broom sweepers (small); Riiprap, stonepaver, placing

stone or wet sacked concrete; Roto scraper and tiller;

Tank

sealer and cleaner; Tree climber, faller, chain saw operator, Pittsburgh Chipper and similar type brush shredders; Underground laborers, including caisson bellower

GROUP 3: Buggymobile; Concrete cutting torch; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2

1/2 feet drill steel or longer; Dri Pak-it machine; High sealer (including drilling of same); Hydro seeder and similar type; Impact wrench, mult-plate; Kettlemen, potmen

and mean applying asphalt, lay-kold, creosote, line caustic

and similar type materials (applying means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools, vibratring machines, pavement breakers, air

blasting, come-along, and similar mechanical tools not separately classified herein; Pipelayers back up man coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and

any and all other services; Rotary Scarifier or multiple head concrete chipping scaarifier; Steel header board man and guideline setter; Tampers, Barko, Wacker and similar type; Trenching machine, handpropelled

GROUP 4: Asphalt raker, luterman, ironer, apshalt dumpman and

asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), Grinder or sander; Concrete saw man; cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Laser beam in connection with laborer's work; Oversize concrete vibrator

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operator 70 pounds and over; Pipelayer performing all services in the laying, installation and all forms of connection of pipe from the point of receiving pipe in the ditch until completion of operation, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit, and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid, gas, air or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated;

No joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzleman), Porta shot-blast, water blasting

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller-all power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of motive power.

LABO0089-002 11/01/2020

	Rates	Fringes
LABORER (MASON TENDER).....	\$ 33.00	19.23

LABO0089-004 07/01/2022

HEAVY AND HIGHWAY CONSTRUCTION

	Rates	Fringes
Laborers:		
Group 1.....	\$ 38.80	22.44
Group 2.....	\$ 39.27	22.44

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Group 3.....	\$ 39.72	22.44
Group 4.....	\$ 40.62	22.44
Group 5.....	\$ 43.58	22.44

LABORER CLASSIFICATIONS

GROUP 1: Laborer: General or Construction Laborer, Landscape

Laborer. Asphalt Rubber Material Loader. Boring Machine Tender (outside), Carpenter Laborer (cleaning, handling, oiling & blowing of panel forms and lumber), Concrete Laborer, Concrete Screeding for rough strike-off,

Concrete

water curing. Concrete Curb & Gutter laborer, Certified Confined Space Laborer, Demolition laborer & Cleaning of Brick and lumber, Expansion Joint Caulking; Environmental Remediation, Monitoring Well, Toxic waste and

Geotechnical

Drill tender, Fine Grader, Fire Watcher, Limbers, Brush Loader, Pilers and Debris Handlers. flagman. Gas Oil and Water Pipeline Laborer. Material Hoseman (slabs, walls, floors, decks); Plugging, filling of shee bolt holes; Dry packing of concrete and patching; Post Holer Digger (manual); Railroad maintenance, repair trackman, road beds;

Rigging & signaling; Scaler, Slip-Form Raisers, Filling cracks on any surface, tool Crib or Tool House Laborer, Traffic control (signs, barriers, barricades, delineator, cones etc.), Window Cleaner

GROUP 2: Asphalt abatement; Buggymobile; Cement dumper (on 1

yd. or larger mixers and handling bulk cement); Concrete curer, impervious membrane and form oiler; Chute man, pouring concrete; Concrete cutting torch; Concrete pile cutter; driller/Jackhammer, with drill steel 2 1/2 feet

or

longer; Dry pak-it machine; Fence erector; Pipeline wrapper, gas, oil, water, pot tender & form man; Grout man;

Installation of all asphalt overlay fabric and materials used for reinforcing asphalt; Irrigation laborer; Kettleman-Potman hot mop, includes applying asphalt, lay-klold, creosote, lime caustic and similar tyhpes of

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materials (dipping, brushing, handling) and waterproofing;

Membrane vapor barrier installer; Pipelayer backup man (coating, grouting, making of joints, sealing caulking, diapering including rubber basket joints, pointing); Rotary scarifier, multiple head concrete chipper; Rock slinger; Roto scraper & tiller; Sandblaster pot tender; Septic tank digger/installer; Tamper/wacker operator;

Tank

scaler & cleaner; Tar man & mortar man; Tree climber/faller, chainb saw operator, Pittsburgh chipper & similar type brush shredders.

GROUP 3: Asphalt, installation of all frabrics; Buggy Mobile

Man, Bushing hammer; Compactor (all types), Concrete Curer

- Impervious membrane, Form Oiler, Concrete Cutting Torch,

Concrete Pile Cutter, Driller/Jackhammer with drill steel 2

1/2 ft or longer, Dry Pak-it machine, Fence erector including manual post hole digging, Gas oil or water Pipeline Wrapper - 6 ft pipe and over, Guradrail erector, Hydro seeder, Impact Wrench man (multi plate), kettleman-Potman Hot Mop includes applying Asphalt, Lay-Kold, Creosote, lime caustic and similar types of materials (dipping, brushing or handling) and waterproofing. Laser Beam in connection with Laborer work.

High Scaler, Operators of Pneumatic Gas or Electric Tools,

Vibrating Machines, Pavement Breakers, Air Blasting, Come-Alongs and similar mechanical tools, Remote-Controlled

Robotic Tools in connection with Laborers work.

Pipelayer

Backup Man (Coating, grouting, m makeing of joints, sealing,

caulking, diapering including rubber gasket joints, pointing and other services). Power Post Hole Digger, Rotary Scarifier (multiple head concrete chipper scarifier), Rock Slinger, Shot Blast equipment (8 to 48 inches), Steel Headerboard Man and Guideline Setter,

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Tamper/Wacker operator and similar types, Trenching Machine
hand propelled.

GROUP 4: Any worker exposed to raw sewage. Asphalt Raker,
Luteman, Asphalt Dumpman, Asphalt Spreader Boxes, Concrete
Core Cutter, Concrete Saw Man, Cribber, Shorer, Head Rock Slinger. Installation of subsurface instrumentation, monitoring wells or points, remediation system installer; Laborer, asphalt-rubber distributor bootman; Oversize concrete vibrator operators, 70 pounds or over.
Pipelayer,
Prefabricated Manhole Installer, Sandblast Nozzleman (Water Blasting-Porta Shot Blast), Traffic Lane Closure.

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Horizontal directional driller, Boring system,
Electronic tracking, Driller: all power drills excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and all other types of mechanical drills without regard to form of motive power. Environmental remediation,
Monitoring well, Toxic waste and Geotechnical driller, Toxic waste removal. Welding in connection with Laborer's work.

LAB00300-005 08/01/2022

	Rates	Fringes
Asbestos Removal Laborer.....	\$ 39.23	23.28

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste, encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste

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by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LABO0345-001 07/01/2022

	Rates	Fringes
LABORER (GUNITE)		
GROUP 1.....	\$ 48.50	21.37
GROUP 2.....	\$ 47.55	21.37
GROUP 3.....	\$ 44.01	21.37

FOOTNOTE: GUNITE PREMIUM PAY: Workers working from a Bosn'n's Chair or suspended from a rope or cable shall receive 40 cents per hour above the foregoing applicable classification rates. Workers doing gunitite and/or shotcrete work in a tunnel shall receive 35 cents per hour above the foregoing applicable classification rates, paid on a portal-to-portal basis. Any work performed on, in or above any smoke stack, silo, storage elevator or similar type of structure, when such structure is in excess of 75'-0" above base level and which work must be performed in whole or in part more than 75'-0" above base level, that work performed above the 75'-0" level shall be compensated for at 35 cents per hour above the applicable classification wage rate.

GUNITE LABORER CLASSIFICATIONS

GROUP 1: Rodmen, Nozzlemen

GROUP 2: Gunmen

GROUP 3: Reboundmen

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LAB01184-001 07/01/2022

	Rates	Fringes
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)		
(1) Drilling Crew Laborer...	\$ 40.69	18.25
(2) Vehicle Operator/Hauler.	\$ 40.86	18.25
(3) Horizontal Directional Drill Operator.....	\$ 42.71	18.25
(4) Electronic Tracking Locator.....	\$ 44.71	18.25
Laborers: (STRIPING/SLURRY SEAL)		
GROUP 1.....	\$ 41.90	21.32
GROUP 2.....	\$ 43.20	21.32
GROUP 3.....	\$ 45.21	21.32
GROUP 4.....	\$ 46.95	21.32

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the

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application process. Traffic protective delineating system
installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

LABO1414-003 08/03/2022

	Rates	Fringes
LABORER		
PLASTER CLEAN-UP LABORER....	\$ 38.92	23.32
PLASTER TENDER.....	\$ 41.47	23.32

Work on a swing stage scaffold: \$1.00 per hour additional.

Work at Military Bases - \$3.00 additional per hour:
Coronado Naval Amphibious Base, Fort Irwin, Marine Corps Air Station-29 Palms, Imperial Beach Naval Air Station, Marine Corps Logistics Supply Base, Marine Corps Pickle Meadows, Mountain Warfare Training Center, Naval Air Facility-Seeley, North Island Naval Air Station, Vandenberg AFB.

PAIN0036-001 07/01/2020

	Rates	Fringes
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Painters: (Including Lead Abatement)

(1) Repaint (excludes San Diego County).....	\$ 29.59	17.12
(2) All Other Work.....	\$ 33.12	17.24

REPAINT of any previously painted structure. Exceptions: work involving the aerospace industry, breweries, commercial recreational facilities, hotels which operate commercial establishments as part of hotel service, and sports facilities.

PAIN0036-010 09/01/2022

	Rates	Fringes
DRYWALL FINISHER/TAPER		
(1) Building & Heavy Construction.....	\$ 39.54	21.50
(2) Residential Construction (Wood frame apartments, single family homes and multi-duplexes up to and including four stories).....	\$ 32.27	14.70

PAIN0036-012 10/01/2022

	Rates	Fringes
GLAZIER.....	\$ 47.90	20.71

PAIN0036-019 06/01/2022

	Rates	Fringes
SOFT FLOOR LAYER.....	\$ 34.77	17.89

PLAS0200-005 08/03/2022

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	Rates	Fringes
PLASTERER.....	\$ 47.37	19.64

NORTH ISLAND NAVAL AIR STATION, COLORADO NAVAL AMPHIBIOUS
BASE, IMPERIAL BEACH NAVAL AIR STATION: \$3.00 additional
per hour.

PLAS0500-001 07/01/2018

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER		
GROUP 1.....	\$ 26.34	19.77
GROUP 2.....	\$ 27.99	19.77
GROUP 3.....	\$ 30.07	21.12

CEMENT MASONS - work inside the building line, meeting
the
following criteria:

GROUP 1: Residential wood frame project of any size;
work
classified as Type III, IV or Type V construction;
interior tenant improvement work regardless the size of
the
project; any wood frame project of four stories or less.

GROUP 2: Work classified as type I and II construction

GROUP 3: All other work

PLUM0016-006 09/01/2022

	Rates	Fringes
PLUMBER, PIPEFITTER, STEAMFITTER Camp Pendleton; Vandenberg		

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Air Force Base.....	\$ 59.68	26.26
Work ONLY on new additions and remodeling of commercial buildings, bars, restaurants, and stores not to exceed 5,000 sq. ft. of floor space.....	\$ 53.51	25.28
Work ONLY on strip malls, light commercial, tenant improvement and remodel work.....	\$ 40.95	23.61
All other work except work on new additions and remodeling of bars, restaurant, stores and commercial buildings not to exceed 5,000 sq. ft. of floor space and work on strip malls, light commercial, tenant improvement and remodel work.....	\$ 55.18	26.26

PLUM0016-011 09/01/2022

	Rates	Fringes
PLUMBER/PIPEFITTER		
Residential.....	\$ 43.66	22.18

PLUM0345-001 09/01/2022

	Rates	Fringes
PLUMBER		
Landscape/Irrigation Fitter..	\$ 38.20	25.65
Sewer & Storm Drain Work....	\$ 42.29	23.03

ROOF0045-001 07/01/2022

	Rates	Fringes
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ROOFER.....\$ 39.90 11.19

SFCA0669-001 04/01/2022

Rates Fringes

SPRINKLER FITTER.....\$ 44.99 25.16

SHEE0206-001 07/01/2020

Rates Fringes

SHEET METAL WORKER

Camp Pendleton.....\$ 42.62 29.55

Except Camp Pendleton.....\$ 40.62 29.55

Sheet Metal Technician.....\$ 30.51 9.49

SHEET METAL TECHNICIAN - SCOPE:

a. Existing residential buildings, both single and multi-family, where each unit is heated and/or cooled by a separate system b. New single family residential buildings including tracts. c. New multi-family residential buildings, not exceeding five stories of living space in height, provided each unit is heated or cooled by a separate system. Hotels and motels are excluded. d. LIGHT COMMERCIAL WORK: Any sheet metal, heating and air conditioning work performed on a project where the total construction cost, excluding land, is under \$1,000,000 e. TENANT IMPROVEMENT WORK: Any work necessary to finish interior spaces to conform to the occupants of commercial buildings, after completion of the building shell

TEAM0166-001 07/01/2022

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	Rates	Fringes
Truck drivers:		
GROUP 1.....	\$ 28.15	24.82
GROUP 2.....	\$ 38.74	24.82
GROUP 3.....	\$ 38.94	24.82
GROUP 4.....	\$ 39.14	24.82
GROUP 5.....	\$ 39.34	24.82
GROUP 6.....	\$ 39.83	24.82
GROUP 7.....	\$ 41.34	24.82

FOOTNOTE: HAZMAT PAY: Work on a hazmat job, where hazmat certification is required, shall be paid, in addition to the classification working in, as follows: Levels A, B and C - +\$1.00 per hour. Workers shall be paid hazmat pay in increments of four (4) and eight (8) hours.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Fuel Man, Swamper

GROUP 2: 2-axle Dump Truck, 2-axle Flat Bed, Concrete Pumping Truck, Industrial Lift Truck, Motorized Traffic Control, Pickup Truck on Jobsite

GROUP 3: 2-axle Water Truck, 3-axle Dump Truck, 3-axle Flat Bed, Erosion Control Nozzleman, Dump Crete Truck under 6.5 yd, Forklift 15,000 lbs and over, Prell Truck, Pipeline Work Truck Driver, Road Oil Spreader, Cement Distributor or Slurry Driver, Bootman, Ross Carrier

GROUP 4: Off-road Dump Truck under 35 tons 4-axles but less than 7-axles, Low-Bed Truck & Trailer, Transit Mix Trucks under 8 yd, 3-axle Water Truck, Erosion Control Driver, Grout Mixer Truck, Dump Crete 6.5yd and over, Dumpster Trucks, DW 10, DW 20 and over, Fuel Truck and Dynamite,

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Truck Greaser, Truck Mounted Mobile Sweeper 2-axle Winch Truck

GROUP 5: Off-road Dump Truck 35 tons and over, 7-axles or more, Transit Mix Trucks 8 yd and over, A-Frame Truck, Swedish Cranes

GROUP 6: Off-Road Special Equipment (including but not limited to Water Pull Tankers, Athey Wagons, DJB, B70 Wuclids or like Equipment)

GROUP 7: Repairman

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is

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like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were

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prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion

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date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination

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- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

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3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"

END OF SECTION

SECTION 08: CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

A. CIVIL RIGHTS

1. The Contractor will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:
 - i. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332, California Civil Code § 51, California Government Code § 11135
 - ii. 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112, California Government Code § 12900 - 12996
 - iii. 49 U.S.C. § 5325 (k).
 - iv. Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.
2. The Civil Rights requirements flow down to all third party subcontractors and their subcontracts at every tier.
3. The following requirements apply to a contract awarded as a result of this solicitation:
 - i. Nondiscrimination - In accordance with U.S. Department of Transportation (DOT), Federal, and State of California regulations 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102, 42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C. § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients.", DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order No. 13166 and DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005), the Unruh Civil Rights Act, California Civil Code § 51, and California Government Code § 11135, the Contractor agrees that it will comply with the identified Federal and State of California laws and regulations, pertaining to NCTD programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal and State of California statutes and/or regulations that may be signed into law or promulgated.
 - ii. Equal Employment Opportunity - The following equal employment opportunity requirements apply to a contract awarded as a result of this solicitation:
 - a. Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender Expression - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 49 U.S.C. § 5332, FTA Circular 4704.1, "Equal Employment Program Guidelines for Grant Recipients", and , the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, including "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Fair Employment and Housing Act,

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California Government Code Sections 12900 - 12996 and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Bidder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.

- b. Sex – The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1975, as amended, 20 U.S.C. § 1681, and 49 CFR part 25. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
 - c. Age - The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, 45 CFR part 90, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and Equal Employment Opportunity Commission (EEOC) implementing regulations 29 CFR part 1625. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
 - d. Disabilities - The Contractor agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(d), 36 CFR part 1194, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, 49 CFR parts 27, 37, 38, and 39, and FTA Circular 4710.1, “Americans with Disabilities Act: Guidance”. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
4. The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

B. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

1. NCTD encourages DBE participation in this solicitation. In order to qualify as a DBE, a Contractor, or a Contractor’s subcontractor, must be certified as a DBE under 49 CFR Part 26. As a recipient of Federal funds, NCTD must comply, and insure that it’s Contractor(s) comply with 49 CFR Part 26 and Section 1101(b) of the Fixing America’s Surface Transportation Act (FAST Act).
2. DBE Requirements/DBE Obligation:
 - i. The Contract to be awarded may be funded in part by the U.S. Department of Transportation (DOT) FTA. As a condition of financial assistance agreements between NCTD and the U.S. DOT, NCTD has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
 - ii. The Contract to be awarded may be funded in part by the U.S. DOT FTA. As a condition of financial assistance agreements between NCTD and the U.S. DOT, NCTD has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
 - iii. Pursuant to Race-Neutral DBE policy directive issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving v. Washington State Department of Transportation* and the FTA’s Guidance (Docket No. FTA-2006-24063; dated March 23, 2006), NCTD will strictly utilize race-neutral measures to meet its overall DBE goals and objectives. Contractors are encouraged to afford small businesses, including DBEs, an equitable opportunity to compete for and perform on a contract resulting from this solicitation.

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- iv. The Contractor, and any of its subcontractors, are to ensure that DBE as defined in 49 CFR Part 26 have equal opportunities to participate in the performance of NCTD contracts. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the equal opportunities to compete for and are awarded contracts. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- v. 1101(b) of the FAST Act extends the Federal statutory requirement that FTA make available at least 10 percent (10%) of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. NCTD and sub-recipients (Contractor and its subcontractors) of FTA-funding assists FTA in meeting this national goal. To receive FTA assistance, NCTD and sub-recipients (Contractor and its subcontractors) of FTA-funding must comply with applicable requirements of DOT regulations 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs".

3. DBE Financial Institutions

- i. The Contractor is to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage subcontractors to make use of these institutions also.
- ii. A list of Minority Owned Banks is on the Federal Reserve website at <http://federalreserve.gov/releases/mob/current/default.htm>. The Federal Reserve website is updated periodically.
- iii. The Contractor is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial.

4. DBE Reporting and Certification

The Contractor shall utilize the PlanetBids "My Contracts" portal to report monthly subcontractor payment reports during the reporting month. Contractor(s) shall ensure that their subcontractors are added into the PlanetBids "MyContracts" portal once the Agreement has been awarded. Contractors shall submit a monthly subcontractor payment report on the PlanetBids "MyContracts" portal by the 20th of each month following the end of the reporting month and should reflect all payments made to subcontractor(s) through the last day of the previous month, even if the subcontractor(s) did not perform any work. Contractor shall ensure that its subcontractor(s) use the PlanetBids "MyContracts" portal to verify the payment amounts the Contractor submitted by the 25th of each month following the end of the reporting month. In order for the Contractor to submit a properly executed monthly subcontractor payment report, the Contractor must verify that their subcontractors' DBE certification is current at the time of payment. Certified Contractors can be found at the following State of California website: [Caltrans - Disadvantaged Business Enterprise System \(dbesystem.com\)](http://Caltrans - Disadvantaged Business Enterprise System (dbesystem.com)). Failure to submit these reports in a timely manner may result in a penalty of \$10 per day, per report.

5. DBE Contract Assurance (49 CFR 26.13)

- i. NCTD does not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. NCTD takes all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts. NCTD's DBE Program as required by 49 CFR Part 26 and as approved by U.S. DOT will be incorporated by reference into the contract resulting from this solicitation.
- ii. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR

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Part 26 in the award and administration of DOT-assisted procurements and contracts of products and services. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is no limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the Contractor from future bidding as non-responsible.

6. DBE Prompt Payment (49 CFR 26.29)

- i. See section entitled "Prompt Payment" in the IFB.
- ii. Failure to comply with these provisions or delay in payment without prior written approval from NCTD will constitute noncompliance, which will result in appropriate administrative sanctions, including, but not limited to a penalty of 2% of the amount due per month for every month that payment is not made.

7. Termination and/or Substitution of DBE Subcontractors (49 CFR 26.53)

- i. Termination and/or substitution of a DBE subcontractor must be done in accordance with NCTD's DBE Program and 49 CFR 26.53. Pursuant to 49 CFR 26.53(f)(1)(i) a Contractor shall not substitute or terminate a DBE subcontractor listed in the original bid without NCTD's prior written consent. NCTD will evaluate all requests in strict accordance with NCTD's DBE Program, and all applicable laws rules and regulations including 49 CFR 26.53(f)(1)(i) the Subletting and Subcontracting Fair practices Act (Chapter 2 [commencing at Section 4100], Division 5, Title 1 of the Public Contract Code of the State of California). Substitution or termination includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE contractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

8. Civil Rights Policy Statements

- i. NCTD's DBE Policy Statement for its FTA approved DBE program is located at the following website: <https://gonctd.com/about-nctd/accountability/>
- ii. NCTD's Discrimination Complaint Procedures Policy Statement for its Title VI/Unruh program is located at the following website: <https://gonctd.com/accessibility/civil-rights/>
- iii. NCTD's EEO Policy Statement for its EEO program is located at the following website: <https://gonctd.com/careers-nctd-north-county-transit-district/>

END OF SECTION

Ultrasonic Rail Testing
SECTION 09: SUBMISSION DOCUMENTS

As indicated below, the documents of listed must be completed by the Bidder and submitted with the bid. If all documents identified below are not submitted and/or are not complete and executed, the bid may be classified as non-responsive and may not be considered further. **Typed or electronic signatures on forms calling for a signature will not be accepted.**

The following check-off list is provided to assist in assuring a complete submission:

1.	<input type="checkbox"/>	BID DECLARATION FORM
2.	<input type="checkbox"/>	BIDDER'S QUESTIONNAIRE FORM
3.	<input type="checkbox"/>	BID BOND FORM
4.	<input type="checkbox"/>	LIST OF SUBCONTRACTORS
5.	<input type="checkbox"/>	WORKER'S COMPENSATION CERTIFICATE
6.	<input type="checkbox"/>	CERTIFICATION OF RESTRICTIONS ON LOBBYING
7.	<input type="checkbox"/>	ELIGIBILITY CERTIFICATION
8.	<input type="checkbox"/>	CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION
9.	<input type="checkbox"/>	CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION – FOR EACH SUBCONTRACTOR
10.	<input type="checkbox"/>	PUBLIC RECORDS ACT INDEMNIFICATION CERTIFICATE
11.	<input type="checkbox"/>	EEO CERTIFICATE
12.	<input type="checkbox"/>	FALSE CLAIMS CERTIFICATE
13.	<input type="checkbox"/>	DISADVANTAGED BUSINESS ENTERPRISE INFORMATION – PRIME
14.	<input type="checkbox"/>	DISADVANTAGED BUSINESS ENTERPRISE CERTIFICATION, IF APPLICABLE
15.	<input type="checkbox"/>	DISADVANTAGED BUSINESS ENTERPRISE INFORMATION – FOR EACH SUBCONTRACTOR (ATTACH COPY OF CERTIFICATION)
16.	<input type="checkbox"/>	REFERENCE CHECK FORM (THREE (3) REFERENCE CHECK FORMS REQUIRED FOR SUBMISSION)
17.	<input type="checkbox"/>	NON-COLLUSION DECLARATION
18.	<input type="checkbox"/>	DBE COMMITMENT FORM
19.	<input type="checkbox"/>	DBE LETTERS OF COMMITMENT
The following items shall be provided by the Contractor as indicated in NCTD's Notice of Award and are required prior to commencement of work and issuance of a Notice to Proceed.		
1.	FAITHFUL PERFORMANCE BOND - ATTACHED	
2.	INSURANCE CERTIFICATES – REQUIRED FROM AWARDEE	
3.	FULLY EXECUTED AGREEMENT	
4.	VENDOR INFORMATION SHEET *From Contractor who has never done business with NCTD -available from NCTD Contract Officer..	

Ultrasonic Rail Testing
BID DECLARATION FORM

NORTH COUNTY TRANSIT DISTRICT
810 Mission Avenue
Oceanside, CA 92054

Having carefully and completely inspected the location of the proposed work and examined all parts of the IFB, including any contract drawings and technical specifications, the undersigned proposes to complete the total requirements according to these documents for a Grand total Bid Price (not including taxes, but including all other fees and charges and any options) of \$ _____. The amount entered on this line by Bidder shall match the Total Bid Price in PlanetBids.

If written notice of the acceptance of this bid is mailed or delivered personally to the undersigned within one hundred twenty (120) days after the date set for the opening of this bid, or at any time thereafter before it is withdrawn, the undersigned Bidder shall execute Contract Documents with NCTD, in accordance with this bid as accepted.

The undersigned agrees to provide all necessary machinery, tools, apparatus and other means to do all the work and furnish all the materials for the work specified in the IFB and any resulting Agreement, and will prosecute the work exactly as described in the Agreement Documents, unless otherwise authorized by written Change Order or Supplemental Agreement, and that the work will be completed within the time requirements and the undersigned will comply with the Guaranty Requirements of this IFB.

Receipt is acknowledged during the bidding period of the following addenda, number(s) _____.
(if none were received, the Bidder is to state "none.")

The Breakdown of the Total Bid Price is provided by Bidder on the Bid Price Form included herein.

Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

Ultrasonic Rail Testing
BIDDER'S QUESTIONNAIRE FORM

1. Legal Name of Bidder: _____
Address: _____
Contact Name: _____
Phone: _____ Fax: _____ Email: _____
Company DUNS #: _____

2. Name Bidder's principal financial institution for financial responsibility reference:
Name of Bank: _____
Street Address: _____
City and State: _____ Telephone: (____) - _____
Officer Familiar with Bidder's Account: _____

3. The following are the names, titles, addresses, and phone numbers of all individuals, partners, joint ventures, and/or corporate officers having a principal interest in this bid:

4. The date of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this bid are as follows:

5. In the past five years, has Bidder been a party to litigation alleging violation of a federal law, fraud, or negligence in its work that could materially affect its ability to perform if it is awarded the Agreement? If so, when, where, and what was the outcome?

6. Does Bidder represent that it has adequate financial resources and staff to perform the Scope of Work (SOW) for this solicitation? Yes No If no, provide an explanation.

7. Does Bidder have any reason to believe it has actual or potential conflicts of interest related to NCTD or that would interfere in any way with Bidder's performance of the SOW or ability to provide unbiased advice to NCTD for this solicitation?

No Yes If yes, provide an explanation.

8. Does Bidder have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability?

No Yes If yes, provide an explanation.

9. Have any of Bidder's management or executive level personnel been convicted of a felony criminal violation under any Federal law within the preceding 24 months?

No Yes If yes, provide an explanation.

Ultrasonic Rail Testing

10. Have any licenses Bidder will rely on for the Scope of Work lapsed at any time in the last five years?

No Yes If yes, provide an explanation.

11. All current and prior DBAs, alias, and/or fictitious business names for any principal having an interest in this bid are as follows:

12. Has Bidder ever failed to complete any work awarded to it? If so, when, where and why?

13. In which state(s) is Bidder's business registered with the applicable Secretary of State?

14. Is Bidder registered on SAM.gov? Yes No If no, please register at www.SAM.gov.

The person signing this form agrees and confirms that he/she/they is authorized to sign it on behalf of Bidder and all statements are true and correct as of the date signed. **A typed signature is not acceptable.**

Print Name: _____ Title: _____

Signed by: _____ Date: _____

Ultrasonic Rail Testing

BID BOND FORM

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____, as BIDDER, and _____, as SURETY, are held and Contractually bound unto North County Transit District, as AGENCY, in the penal sum of _____ Dollars, which is ten percent (10%) of the total amount bid by BIDDER to AGENCY in PlaentBids for the above stated project, for the payment of which sum, BIDDER and SURETY agree to be bound, jointly and severally, Contractually by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the BIDDER is about to submit a bid to AGENCY for the above stated project, if said bid is rejected, or if said bid is accepted and a contract is awarded and entered into by BIDDER in the manner and time specified, then this obligation shall be null and void, otherwise it shall remain in full force and effect in favor of AGENCY.

IN WITNESS WHEREOF, the parties hereto have set their names, titles, hands and seals this _____ day of _____, _____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to the authority of its governing body.

(SEAL)

Attest:

Bidder: _____
By: _____
Title: _____

(SEAL)

Witness:

Surety: _____
By: _____
Title: _____

Ultrasonic Rail Testing
LIST OF SUBCONTRACTORS FORM

Bidder shall complete all portions of the List of Subcontractors form attached hereto. The Contractor shall list only one subcontractor for each such portion as is defined by the Contractor in this bid.

If a Bidder fails to specify a subcontractor, it shall be deemed to have agreed that it is fully qualified to perform that portion itself, and that it shall perform that portion itself.

No Bidder whose bid is accepted shall, without prior written permission from the Contract Officer: (a) substitute any subcontractor, (b) permit any subcontract to be voluntarily assigned or transferred, or allow it to be performed by anyone other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work.

Ultrasonic Rail Testing
LIST OF SUBCONTRACTORS

The Contractor shall not substitute any subcontractor, permit any subcontract to be voluntarily assigned or transferred, or allow it to be performed by anyone other than the original subcontractor listed in the original proposal, or sublet/subcontract any portion of the work without the written permission of NCTD.

Name of Subcontractor	Email	Public Works Contractor Registration Number and Expiration Date	Address and Phone Number	Total Compensation of Sub and % of Total Agreement Amount	Specific Description of Subcontract	CUCP Certified DBE and/or DGS Certified SB
				\$ _____ _____ %		
				\$ _____ _____ %		
				\$ _____ _____ %		
				\$ _____ _____ %		
				\$ _____ _____ %		
				\$ _____ _____ %		
				\$ _____ _____ %		

1. Do not list alternative subcontractors for the same work.
2. Use additional sheets as necessary.
3. The Bidder will not substitute any person, Contractor, or corporate organization as subcontractor in place of the subcontractors designated in the original bid without the written consent of the NCTD Contract Officer pursuant to the termination provisions of 49 CFR 26.53 (f)(l)(i) and California Public Contract Code Chapter 4, Part 1, Division 2.
4. Value of subcontract and percent of total contract must be presented at time of bid.
5. CUCP certified DBE contractors can be found at the following website: <https://californiaucp.dbesystem.com/>
 California Dept. of General Services (DGS) certified Small Business (SB) Contractors can be found at the following website:
<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

WORKERS' COMPENSATION CERTIFICATE

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of the Labor Code and I will comply with such provisions before commencing the performance of the Work of this Agreement.

Official, legal name of Contractor or individual (Type or Print) offering the bid

Print Name: _____ Title: _____

Signed by: _____ Date: _____

Ultrasonic Rail Testing
CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____ hereby certify on behalf of
(Type name)
_____ that:
(Name of company)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontractors, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20____.

Official, legal name of Contractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

Ultrasonic Rail Testing
ELIGIBILITY CERTIFICATION

Federally funded

If federally funded, the award of this contract is subject to a financial assistance contract between the North San Diego County Transit Development Board and the U.S. Department of Transportation. Any name appearing on the Comptroller General's list of ineligible Offeror for federally-financed or assisted contracts is not eligible for this contract.

If federally funded, the Firm shall certify the following:

I hereby certify that neither I, the Offeror, nor any officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible Offerors for federally-funded and assisted contracts. In the event any of the above persons or parties become included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

Not federally funded

NCTD has determined that any name appearing on the Comptroller General's list of ineligible Offeror for federally-financed or assisted contracts is not eligible for this contract, regardless of the funding source.

If not federally funded, Firm shall certify the following:

I hereby certify that neither I, the Offeror, nor any officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible Offerors for federally-funded and assisted contracts. In the event any of the above persons or parties become included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

Official, legal name of Contractor or individual (Offeror) (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

Ultrasonic Rail Testing
**CERTIFICATION OF PRIMARY PARTICIPANT (CONTRACTOR) REGARDING DEBARMENT,
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

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

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
5. The award of this Agreement is subject to a financial assistance contract between the NCTD and the U.S. Department of Transportation. Any name appearing on the Comptroller General's list of ineligible Contractor for federally financed or assisted contracts is not eligible for this contract.
6. The Contractor hereby certifies that neither it nor any of its officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible Contractors for federally funded and assisted contracts. In the event any of the above persons or parties becomes included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this certification.

CONTRACTOR CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 *ET SEQ.* ARE APPLICABLE THERETO.

Official, legal name of Contractor or individual (Type or Print) I

Print Name: _____ Title: _____

Signed by: _____ Date: _____

CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

TO BE COMPLETED BY EACH SUBCONTRACTOR (NOT THE CONTRACTOR)

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

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
5. The award of this contract is subject to a financial assistance contract between the NCTD and the U.S. Department of Transportation. Any name appearing on the Comptroller General's list of ineligible Contractor for federally financed or assisted contracts is not eligible for this contract.
6. The Subcontractor hereby certifies that neither it nor any of its officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible Contractors for federally funded and assisted contracts. In the event any of the above persons or parties becomes included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

[If the primary participant (applicant for a FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.]

THE SUBCONTRACTOR (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL BIDDER FOR A MAJOR THIRD PARTY CONTRACT), CERTIFIES OR AFCONTRACTORS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Official, legal name of Subcontractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

PUBLIC RECORDS ACT INDEMNIFICATION CERTIFICATE

The Bidder certifies that:

It will indemnify and defend NCTD in the event NCTD withholds production of any records submitted by Contractor that are marked "Confidential", "Trade Secret", "Proprietary", or similar designations, in response to a Public Records Act request pursuant to California Government Code section 6250 or a Freedom of Information Act request

Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

Ultrasonic Rail Testing

EEO CERTIFICATE

The Offeror hereby certifies that the company **has** _____ **OR** **has not** _____ been found, adjudicated, or determined to have violated any laws of Executive Orders relating to employment discrimination or affirmative action including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d); Executive Order 10925, 11114, or 11246; or the California Fair Employment and Housing Act (Government Code 12460 et seq.); by any Federal or California court or agency, including but not limited to the Equal Employment Opportunity Commission, the Office of Federal Contract compliance Programs, and the California Fair Employment and Housing Commission.
If yes, please explain the circumstance.

Official, legal name of Contractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

Ultrasonic Rail Testing

FALSE CLAIMS CERTIFICATE

BIDDER'S CERTIFICATION OF COMPLIANCE
WITH
LAWS RELATING TO
FALSE CLAIMS

I hereby certify that if awarded the Contract of which this certificate shall be made a part of, Contractor will not violate any provisions of the False Claims Act or any other applicable federal or state laws and regulations relating to the filing of false claims against a public agency, including laws and regulations hereinafter enacted. I additionally certify that in the event it is determined that Contractor has violated the False Claims Act that such violation shall be grounds for, among other things, debarment pursuant to the policies established by Federal, State, or local law.

Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

Ultrasonic Rail Testing
**DISADVANTAGED BUSINESS ENTERPRISE (DBE)/ SMALL BUSINESS (SB)
PROGRAM INFORMATION**

(TO BE COMPLETED BY THE CONTRACTOR)

This form must be completed by the Contractor submitting the bid and for each Subcontractor listed in the "List of Subcontractors" Form.

FAILURE TO SUBMIT A COMPLETED FORM FOR THE PRIME AND ALL SUBCONTRACTORS MAY RESULT IN A NON-RESPONSIVE DETERMINATION.

Regardless of your DBE status, Section "A" must be completed, the form signed and provided with your bid/proposal:

A. Please provide the following information:

1. Name of Contractor: _____
 2. Address: _____
 3. Contact Name: _____
 4. Phone: _____ Fax: _____ E-mail: _____
 5. Type of Work Performed (list NAICS Codes if known): _____

 6. Date business started (formed, incorporated, began operations, etc.): _____ (MM/DD/YY)
 7. Contractor's gross receipts for last year* (check one):
 Less than \$1,000,000 \$1,000,001 - \$5,000,000 \$5,000,001 - \$10,000,000
 \$10,000,001 - \$15,000,000 \$15,000,001 - \$23,980,000 \$23,980,001 - \$50,000,000
 \$23,980,001 - \$50,000,000 \$50,000,001 - \$100,000,000 More than \$100,000,000
- * The Department of Transportation annually decides the amount of average annual gross receipts a firm must have to be eligible to become a DBE. Currently, if your company in the previous three fiscal years has had average annual gross receipts below \$23,980,000, your company may be eligible for DBE Certification.
8. Is your company a certified Disadvantaged Business Enterprise (DBE) and/or Small Business (SB)? Yes No
 - a. If yes, check the applicable box and state the corresponding certification number:
 DBE _____ SB _____
 9. Do you want NCTD to provide your company with additional guidance on how to become DBE or SB certified? Yes No

B. If you selected your business is a DBE and/or SB above, please attach the applicable certification to this page.

NCTD accepts certification from only the agencies listed at:

<https://dot.ca.gov/-/media/dot-media/programs/civil-rights/documents/dbe/cucp-roster-of-certifying-agencies-1-2021-a11y.pdf>

Caltrans Certified DBE Contractors can be found at the following website:

<https://californiaucp.dbesystem.com/>

Certified California Dept. of General Services Small Business can be found at the following website:

<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

Name: _____

Title: _____

Signature: _____

Date: _____

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)/ SMALL BUSINESS (SB)
PROGRAM INFORMATION
(TO BE COMPLETED BY THE SUBCONTRACTOR)**

This form must be completed by the Contractor submitting the bid and for each Subcontractor listed in the "List of Subcontractors" Form.

FAILURE TO SUBMIT A COMPLETED FORM FOR THE PRIME AND ALL SUBCONTRACTORS MAY RESULT IN A NON-RESPONSIVE DETERMINATION.

Regardless of your DBE status, Section "A" must be completed, and the form signed and provided with your bid/proposal:

A. Please provide the following information:

1. Name of Contractor: _____
 2. Address: _____
 3. Contact Name: _____
 4. Phone: _____ Fax: _____ E-mail: _____
 5. Type of Work Performed (list NAICS Codes if known): _____

 6. Date business started (formed, incorporated, began operations, etc.): _____ (MM/DD/YY)
 7. Contractor's gross receipts for last year* (check one):
 Less than \$1,000,000 \$1,000,001 - \$5,000,000 \$5,000,001 - \$10,000,000
 \$10,000,001 - \$15,000,000 \$15,000,001 - \$23,980,000 \$23,980,001 - \$50,000,000
 \$23,980,001 - \$50,000,000 \$50,000,001 - \$100,000,000 More than \$100,000,000
- * The Department of Transportation annually decides the amount of average annual gross receipts a firm must have to be eligible to become a DBE. Currently, if your company in the previous three fiscal years has had average annual gross receipts below \$23,980,000, your company may be eligible for DBE Certification.
8. Is your company a certified Disadvantaged Business Enterprise (DBE) and/or Small Business (SB)? Yes No
 - a. If yes, check the applicable box and state the corresponding certification number:
 DBE _____ SB _____ N/A
 9. Do you want NCTD to provide your company with additional guidance on how to become DBE or SB certified? Yes No

B. If you selected your business is a DBE and/or SB above, please attach the applicable certification to this page.

NCTD accepts certification from only the agencies listed at:

<https://dot.ca.gov/-/media/dot-media/programs/civil-rights/documents/dbe/cucp-roster-of-certifying-agencies-1-2021-a11y.pdf>

Caltrans Certified DBE Contractors can be found at the following website:

<https://californiaucp.dbesystem.com/>

Certified California Dept. of General Services Small Business can be found at the following website:

<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

Name: _____

Title: _____

Signature: _____

Date: _____

Ultrasonic Rail Testing
REFERENCE CHECK FORM – THREE (3) REFERENCES REQUIRED

IFB # _____

Name of Bidder (Contractor) being provided a reference: _____

Note: To be completed and signed by the person providing a reference.

CLIENT/CONTACT INFORMATION:

NAME OF COMPANY PROVIDING REFERENCE: _____

REFERENCE'S ADDRESS: _____

CONTACT NAME AND TITLE: _____

PHONE NUMBER: _____ EMAIL: _____

1. Quality of Contractor's work concerning no more than two (2) project examples:

2. Degree of Contractor's cooperation with team (internal and external)

3. Project and deliverables on time and within budget?

4. If change orders or amendments were issued on the projects above, what percent of work constituted the amendments or change orders?

5. Were there any problems or delays with the projects that were influenced by the Contractor? If so, please provide examples.

6. Overall rating – "1 through 10 with 10 being the highest rating" with rationale as to rating

Ultrasonic Rail Testing

7. Would you work with Contractor again? Yes/No – rationale as to why

Please place a signature below. **PLEASE DO NOT TYPE SIGNATURE.**

Signed: _____ Date: _____

Title: _____

NON-COLLUSION DECLARATION

The undersigned hereby declares:

I am the _____ of _____ ("Contractor"), the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Bidder. All statements contained in the bid are true. The Bidder has not, directly or indirectly, submitted its bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Official, legal name of Contractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

NOTICE REGARDING DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS AND INSTRUCTIONS

NCTD has established a DBE goal for this Agreement of 0%.

I. DBE PARTICIPATION GENERAL INFORMATION

In conformance with 49 CFR 26, NCTD is required to implement a minority-conscious component for its DBE program. The minority-conscious goal established by NCTD for the Agreement, or if applicable, each contract Task Order, will be based on an analysis of available subcontracting opportunities and the availability of DBEs within the NCTD market area. In the event of any conflicts or inconsistencies between the CFR and the NCTD DBE Program with respect to DOT-assisted contracts, the CFR shall prevail. It is NCTD policy to provide disadvantaged, minority, and women-owned business enterprises, as defined in 49 CFR 26, an equitable opportunity to participate in all contracting opportunities. NCTD has entered into agreements with FTA, FHWA, and FRA regarding its DBE programs, which include minority and women-owned business enterprises. NCTD is required to administer contracts, contractor selection, and all related procurement activities without regard to race, color, religion, disability, political beliefs, age, national origin, gender, sexual orientation, veteran status, or cultural background. Accordingly, no firm or individual shall be denied the opportunity to compete for NCTD contracts by reasons so stated or implied. DBEs and other small businesses are strongly encouraged to participate in the performance of agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by DBEs in DOT Financial Assistance Programs").

Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this Agreement and should take all necessary and reasonable steps for this assurance.

Contractor is encouraged to use services offered by financial institutions owned and controlled by DBEs. For more information, including a list of Minority Owned Banks, visit the United States Department of Treasury's Financial Management Service's website at www.fms.treas.gov/mbdp/index.html. Please be advised that the utilization of Minority Owned Banks is encouraged but will not be counted as participation toward achievement of a DBE goal.

The Agreement is subject to 49 CFR 26.13(b) which states:

"The contractor [Contractor], subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the contractor [Contractor or subcontractor] to carry out these requirements is a material breach of this contract [Agreement], which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments
- Assessing sanctions
- Liquidated damages
- Disqualifying the contractor from future bidding as non-responsible."

Information regarding the NCTD DBE can be found at: [Doing Business With NCTD | NCTD - North County Transit District \(gonctd.com\)](http://Doing Business With NCTD | NCTD - North County Transit District (gonctd.com))

A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP). Please note that DBE goals must be met using firms certified as DBE by the state of California. SBE, Women-Owned Business Enterprise, Veteran-owned, and Minority Business Enterprise certifications are not equivalent to DBE certification.

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A certified DBE may participate as a Contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

Unless Contractor has entered into a joint venture with a DBE, Contractor will be required to document at least one of the following:

- Contractor is a DBE and will meet the DBE goal by performing work with its own forces.
- Contractor will meet the goal through work performed by DBE subcontractors, suppliers, or trucking companies.
- Contractor made adequate Good Faith Efforts (GFE) to meet the goal.

A DBE joint venture partner must be responsible for specific items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. A DBE joint venture partner must share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.

A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.

Contractor shall list only one subcontractor for each category of work described in its proposal or bid. All DBE subcontractors should be listed in the cost proposal or bid and list of subcontractors (Subcontractor List). If Contractor is a certified DBE and is eligible to claim all of the work in the Agreement or an applicable Task Order, its participation will count as DBE participation except that portion of the work to be performed by non-DBE subcontractors. Contractor shall include in each subcontract the Contractor signs with a subcontractor, language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

NCTD reserves the right to withhold payment to the Contractor in an amount up to \$10,000 in order to enforce the DBE provisions of the Agreement or to use other remedies described in this Agreement. NCTD is not obligated, however, to make such a deduction or to provide notice thereof. Payment of any withheld funds shall not be made on the Agreement, or if applicable, Task Order, until such time as Contractor submits sufficient documentation demonstrating achievement of the commitment or until such time as the commitment is modified or waived by NCTD or a sanction amount is agreed to by the parties. Contractor shall include the provisions in this subsection in each subcontract it signs with a subcontractor.

NCTD also may conduct post-award monitoring of Contractor's compliance with the DBE provisions of the Agreement. For example, NCTD may ask to review Contractor's subcontracts to ensure that DBEs have done the work for which credit was claimed. Contractor shall cooperate with NCTD requests for assistance with post-award monitoring. Failure by the Contractor to cooperate may be considered a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as NCTD deems appropriate.

Failure to meet a DBE Commitment due to unilateral decisions by Contractor will be considered a material breach of contract. Contractor must communicate with NCTD promptly if it believes changes in work approved by NCTD merit modification of the commitment. Contractor shall notify the NCTD Project Manager in Contractor's monthly project status reports of any anticipated problems with Contractor meeting its commitment.

II. RESOURCES

NCTD participates as a Non-Certifying Member in the CUCP. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be

located on the database, please contact the Caltrans Office of Certification at (916) 324-1700 for assistance.

Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <https://dot.ca.gov/programs/civil-rights/dbe-search>

- Click on Access the DBE Query Form
- Click on Start DBE Firms Query
- Searches can be performed by one or more criteria
- Follow instructions on the screen

III. DBE DIRECTORY

If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered by calling (916) 263-0822 or by writing to:

California Department of Transportation
Publication Distribution Unit
1900 Royal Oaks Drive
Sacramento, CA 95815-3800

IV. DBE CREDITING PROVISIONS

Materials or supplies purchased from DBE count towards DBE credit under the following conditions:

- If the materials or supplies are obtained from a DBE Manufacturer, count 100 percent of the cost of the materials or supplies. A DBE Manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- If the materials or supplies purchased from a DBE Regular Dealer, count 60 percent of the cost of the materials or supplies. A DBE Regular Dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, or if applicable, Task Order, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating or maintaining a place of business provided in this section.
- If a dealer both owns and operates distribution equipment needed for the Work, any supplementing of Regular Dealers' own distribution equipment shall be, by a long-term lease agreement and not on an ad hoc or agreement-by-agreement basis. Packagers, brokers, Manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE Regular Dealers within the meaning of this section.
- Materials or supplies purchased from a DBE, which is neither a Manufacturer nor a Regular Dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required for the Work, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

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For DBE trucking companies: credit for DBE will count towards DBE credit under the following conditions:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible under the Agreement, or if applicable, Task Order, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.
- The DBE receives credit for the total value of the transportation services it provides on the Agreement, or if applicable, Task Order, using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. A DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement, or if applicable, Task Order.
- The DBE may also lease trucks from a non-DBE firm, including an owner-operator. A DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. A DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE. If Contractor chooses this approach to meet a NCTD goal, it must notify NCTD in advance and obtain concurrence from NCTD since NCTD will be required to obtain written consent from the appropriate DOT operating administration.
- For the purposes of this Section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

V. DBE CERTIFICATION

NCTD will accept DBE certification from the certifying member agencies, which certify eligibility of DBEs in accordance with 49 CFR 26, under the CUCP or another state's certification program pursuant to the interstate certification process described in 49 CFR 26.85. Listings of certifying member agencies are available in the Caltrans Office of Civil Rights website at: <https://dot.ca.gov/programs/civil-rights/dbe-search>. A firm that is certified DBE by another state at the time of proposal submission, must be certified as DBE by the state of California by the time of execution of the Agreement, or if applicable, Task Order.

The CUCP database includes the DBEs certified from all certifying agencies participating in the CUCP. If Contractor is looking for a certified DBE firm or wants to be sure the firm it plans to subcontract with is certified, Contractor may perform a query in the CUCP database by going to: <https://dot.ca.gov/programs/civil-rights/dbe-search>. If Contractor believes a firm is certified that cannot be located on the database, it may contact the Caltrans Office of Civil Rights Certification Unit at (916) 324-1700 for assistance.

If a DBE subcontractor is decertified during the term of the Agreement, or if applicable, Task Order, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the term of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to NCTD. A DBE Certification Status Change Form indicating the DBE's existing certification status, shall be signed and certified correct by Contractor and shall be furnished to NCTD within 90 days from the change in certification status.

VI. COMMERCIALY USEFUL FUNCTION STANDARDS

To be credited, a DBE must perform a commercially useful function in and be utilized for work in the North American Industry Classification System (NAICS) code for which they are CUCP certified. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, or if applicable, Task Order, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, NCTD will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement, or if applicable, Task Order, is commensurate with the work it is actually performed and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, NCTD must examine similar transactions, particularly those in which DBEs do not participate. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, NCTD will presume that it is not performing a commercially useful function. When a DBE is presumed not to be performing a commercially useful function as provided in the previous paragraph, the DBE may present evidence to rebut this presumption. NCTD may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

VII. DBE "FRONTS" AND FRAUDS

Only legitimate DBEs are eligible to participate in any federally funded contract. Therefore, Contractor is cautioned against knowingly and willingly using "fronts" or doing business with DBEs in a manner, which could compromise the DBE's continued eligibility and DBE participation credit. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of federal funds should be immediately reported to the Office of Inspector General, United States DOT toll free hotline at (800) 424-9071.

VIII. SUBSTITUTION

DBEs must perform work or supply materials as listed in the Proposer DBE Commitment form and as shown in the Exhibit entitled "Contractor Contract DBE Commitment Information". Contractor shall not terminate a DBE listed subcontractor for convenience and perform the work with its own forces or obtain materials from other sources without prior written authorization from NCTD.

NCTD will grant authorization to substitute other forces or sources of materials if Contractor submits a request to NCTD that establishes any of the following justifications:

- Listed DBE fails or refuses to execute a written contract based on plans and specifications for the Work.
- Contractor stipulates that a bond is a condition of executing the subcontract and the listed DBE fails to meet the bond requirements.
- Work requires a license and listed DBE does not have a valid license.
- Listed DBE fails or refuses to perform the work or furnish the listed materials.
- Listed DBE's work is unsatisfactory and not in compliance with its contract.
- Listed DBE delays or disrupts the progress of the work.

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- Listed DBE becomes bankrupt or insolvent.

Contractor will need to follow the procedures below to substitute DBE subcontractors so that the DBE commitment can be met.

Before requesting permission from NCTD for a substitution, Contractor must give notice in writing to the DBE subcontractor, with a copy to the NCTD Disadvantaged Business Enterprise Liaison Officer (DBELO), of its intent to request to terminate and/or substitute the DBE subcontractor. The notice sent to the DBE subcontractor must include the reason the Contractor is requesting the substitution.

Contractor must give the DBE subcontractor five days to respond to Contractor's notice. The DBE's response should advise the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract. The response should include information regarding why the substitution should not be approved. Contractor shall provide the NCTD DBELO with a copy of the DBE subcontractor's response, if any, when submitting its request for substitution.

The proposed new subcontractor must be certified to perform a commercially useful function for one or more of the types of work in the scope of work. NCTD can assist with locating DBE firms.

Contractor must check the CUCP database to ensure the proposed firm is DBE certified for the associated categories and types of work (identified by the NAICS codes) in the scope of work. If, even after seeking assistance from NCTD in locating DBE firms, Contractor cannot locate DBE firms that are ready, willing and able to do the work, Contractor shall provide NCTD or its designee with GFE documentation regarding its efforts for the NCTD contract file that will justify waiver of all or a portion of the DBE goal/commitment. NCTD or a designee will review and determine if Contractor's submitted GFE documentation is adequate. Contractor shall provide NCTD with the qualifications and fee information that was used for selection.

IX. DBE REPORTING

If Contractor or any of its subcontractors, suppliers, or trucking companies are DBE-certified, Contractor must either have completed a DBE Commitment Form and submitted it with its proposal or bid, or if this Agreement is awarded without a competitive procurement, Contractor must execute the DBE Commitment Form at the time it executes the Agreement. Contractor shall report subcontractor payment details for any DBE subcontractor or supplier to NCTD using PlanetBids by the 15th of each month. Subcontractors with lower tier DBE subcontractors shall report payment details to NCTD using PlanetBids within 15 days from the date payment is received from Contractor or higher tier subcontractor. Contractor is responsible for ensuring subcontractors are verifying payments through PlanetBids on a timely basis and shall promptly notify delinquent subcontractors to verify payments. In addition, Contractor shall be required to submit a document entitled "Final Utilization Report" ("the FUR") within 90 days after the date all Work is completed.

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DBE COMMITMENT FORM

Used to show commitment at time of Agreement, or if applicable, Task Order, execution. All information on this form must be typed, excluding signatures.

1. Local Agency: NCTD 2. Agreement or Task Order DBE Goal %: _____
 3. Project Description: _____
 4. Project Location: _____
 5. Contractor's Name: _____ 6. Prime is Certified DBE: 7. Total Award Amount: _____
 8. Total Dollar Amount for ALL Subcontractors: _____ 9. Total Number of ALL Subcontractors: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
NCTD to Complete this Section		14. TOTAL DOLLAR AMOUNT OF CLAIMED DBE PARTICIPATION	\$
20. NCTD Contract Number: _____		15. TOTAL PERCENT OF CLAIMED DBE PARTICIPATION ON AGREEMENT	%
21. Federal-Aid Project Number: _____		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
22. Contract Execution Date: _____			
NCTD certifies that all DBE certifications are valid and information on this form is complete and accurate.		15. Preparer's Signature _____ 16. Date _____ 17. Preparer's Name _____ 18. Phone _____ 19. Preparer's Title _____	
23. NCTD Representative's Signature	24. Date		
25. NCTD Representative's Name	26. Phone		
27. NCTD Representative's Title			

INSTRUCTIONS – DBE COMMITMENT FORM

CONTRACTOR SECTION

1. Local Agency – NCTD name entered as agency that is funding the Agreement or Task Order.
2. Contract DBE Goal - Enter the contract or Task Order DBE goal percentage set by NCTD.
3. Project Description - Enter the project description.
4. Project Location - Enter the project location.
5. Contractor's Name - Enter the Contractor's firm name.
6. Prime Certified DBE - Check box if Contractor is a certified DBE.
7. Total Contract Award Amount - Enter the total Agreement or Task Order award dollar amount for the Contractor.
8. Total Dollar Amount for ALL Subcontractors – Enter the total dollar amount for all subcontracted Contractors. SUM = (DBEs + all Non-DBEs). Do not include the Contractor information in this count.
9. Total number of ALL subcontractors – Enter the total number of all subcontracted Contractors. SUM = (DBEs + all Non-DBEs). Do not include the Contractor information in this count.
10. Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the Contractor's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE.
11. DBE Certification Number - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date proposals are due to NCTD.
12. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted Contractors. Also, enter the Contractor's name and phone number, if the prime is a DBE.
13. DBE Dollar Amount - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the Contractor if the prime is a DBE.
14. Total Claimed DBE Participation - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. %: Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than the Contract/Task Order DBE Goal, an adequately documented Good Faith Effort (GFE) is required.
15. Preparer's Signature - The person completing the DBE commitment form on behalf of the Contractor's firm must sign their name.
16. Date - Enter the date the DBE commitment form is signed by the Contractor's preparer.
17. Preparer's Name - Enter the name of the person preparing and signing the Contractor's DBE commitment form.
18. Phone - Enter the area code and phone number of the person signing the Contractor's DBE commitment form.
19. Preparer's Title - Enter the position/title of the person signing the Contractor's DBE commitment form.

NCTD SECTION

20. NCTD Contract Number - Enter the NCTD contract and/or Task Order number.
21. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
22. Contract Execution Date - Enter the date the Agreement was executed.
23. NCTD Representative's Signature - The person completing this section of the form for NCTD must sign their name to certify that the information in this and the Contractor Section of this form is complete and accurate.
24. Date - Enter the date the form is signed by the NCTD Representative.
25. NCTD Representative's Name - Enter the name of the NCTD Representative certifying the Contractor's DBE commitment form.
26. Phone - Enter the area code and phone number of the person signing the Contractor's DBE commitment form.
27. NCTD Representative Title - Enter the position/title of the NCTD Representative certifying the Contractor's DBE Commitment form.

FAITHFUL PERFORMANCE BOND – (100% of Contract Price)

KNOW ALL MEN BY THESE PRESENTS:

That we, _____ hereinafter referred to as "Contractor," as principal, and _____ as Surety, are held and Contractually bound unto the North County Transit District, State of California, in the sum of _____ dollars (\$ _____), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, jointly and severally, Contractually by these presents.

WHEREAS, said Contractor has been awarded and is about to enter into contract with the North County Transit District for: _____, according to the bonding requirements found in IFB 32086 at _____, _____, and is required under the terms of the Contract to give this bond in connection with the execution of said Agreement.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounded Contractor, or their or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform, the covenants, conditions, and agreements in the said contract and any alteration thereof made as therein provided, on its or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the North County Transit District, its officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise, It shall be and remain in full force and virtue. And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect Its obligation on this bond, it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Agreement, or to the work, or to the specifications. In the event suit is brought upon this bond by the North County Transit District and judgment is recovered, the Surety shall pay all litigation expenses incurred by the North County Transit District in such suit, including attorneys' fees, court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Contractor, as principal, and Surety above named, on the _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

WITNESS our hands this _____ day of _____, 20____. (Seal)

Official, legal name of bidding Contractor or individual
(Type or Print)

Surety

Signed by:

Signed by:

Type or Print Name

Type or Print Name and Title

Type or Print Title

Approved

*NOTE: Appropriate Notarial Acknowledgements of Execution by Contractor and Surety must be completed and attached. The Surety's Power of Attorney must also be attached.

ATTACHMENT 01: SAMPLE AGREEMENT



**SERVICES AGREEMENT
BETWEEN
NORTH COUNTY TRANSIT DISTRICT
AND
CONTRACTOR NAME
AGREEMENT NUMBER:**

This Agreement ("Agreement") is made and entered into by and among the North County Transit District ("NCTD"), operating pursuant to Public Utilities Code sections §125000, et. seq. and _____ ("Contractor"). Both NCTD and Contractor are collectively referred to as "Parties".

RECITALS

1. NCTD is in need of an experienced and qualified Contractor to provide rail testing and inspection of, and reporting on, its rail system ("Work").
2. Contractor represents it is duly-licensed and has the necessary experience and qualifications to provide the Work.
3. Parties' desire by this Agreement to establish the terms for NCTD to retain Contractor to provide the Work described herein.

AGREEMENT

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Order of Precedence

This Agreement incorporates, by reference, the below documents in their entirety. All such documents are Exhibits to this Agreement. In addition, in the event of inconsistency or ambiguity in this Agreement, the following order of precedence shall apply:

- a. This Agreement with its attachments
- b. Conformed Invitation for Bid (IFB) No. 32288
- c. Contractor's proposal dated Month DD, 20YY

2. Services

Contractor shall provide NCTD with the Work described in the conformed Scope of Work attached to this Agreement.

Contractor agrees to provide services to NCTD in accordance with the terms and conditions of this Agreement, and to exercise the degree of professional care, skill, efficiency and judgment ordinarily employed by Contractor with expertise in the fields of service covered by the Scope of Work. Contractor represents that it has in effect all licenses, registrations, certifications, and insurance policies in good standing that are required under applicable law and this Agreement to perform the Work, and agrees

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to retain such licenses, registrations, certifications, and insurance policies in active status throughout the duration of this Agreement.

Contractor shall ensure that it provides adequate controls with regard to the quality of its deliverables. Written deliverables will typically be provided to NCTD in draft for review. If NCTD must make multiple rounds of revisions to Contractor's deliverables due to failure of Contractor to provide adequate quality control, NCTD shall not be required to pay Contractor for time spent by Contractor to correct its deliverables.

NCTD review, approval, acceptance of, or payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance thereof; and Contractor shall be, and remain liable to, Contractor in accordance with applicable law for all damages to NCTD by Contractor's errors or omissions deemed to be negligent performance of any of the services furnished under this Agreement.

3. Subcontractors and Key Personnel

All persons and entities authorized by Contractor to provide goods or services under this Agreement shall be referred to herein as "subcontractors." When subcontracting on a NCTD project, Contractor shall provide a copy of this Agreement to its subcontractors and inform them of its applicability to their subcontracts. All services and goods under this Agreement shall be provided by Contractor or subcontractors identified in Contractor's proposal or the Agreement. Information regarding each subcontractor shall be added to PlanetBids, NCTD's vendor management system.

Contractor must obtain **prior** approval from NCTD to add any subcontractors during the term of the Agreement. NCTD may need to verify licensure, debarment status, pay rates, and other matters before the subcontractor can provide goods or services. In addition, the Contractor must promptly add such additional subcontractors to PlanetBids so that NCTD may track promptness of payments and usage of Disadvantaged Business Enterprises and Small Businesses (DBE/SB). Contractor shall assist NCTD in tracking use of DBE and SB firms, whether or not federal funding is used by providing documentation and data as requested by NCTD.

If Contractor subcontracts any of the work to be performed under this Agreement, Contractor shall be as fully responsible to NCTD for the acts, errors, or omissions of Contractor's subcontractor and of the persons employed by the subcontractor as Contractor is for the acts and omissions of persons directly employed by Contractor. NCTD reserves the right to approve the use of any subcontractor and the Contractor must make a request in writing to use a subcontractor not already named in the Agreement. Contractor shall provide a copy of any subcontract related to this Agreement within ten calendar days of a request from NCTD. All subcontracts involving the Work shall pass through all applicable provisions in this Agreement, including but not limited to federal provisions and prevailing wage requirements that may be provided herein.

The Contractor shall identify key personnel assigned to be assigned Work under the Agreement. Such key personnel shall not be replaced or removed without approval by NCTD. Key personnel shall be identified for not only the Contractor but also all subcontractors. Addition of personnel or subcontractors shall only be permitted with advance approval from NCTD in accordance with the process described in the Agreement.

4. Time of Performance

The Agreement will remain valid for a four (4) year base term beginning upon full execution of the Agreement and ending no later than Month DD, 20YY. With one (1) optional three (3) year extension executed at NCTD's discretion.

As time is of the essence, Contractor shall perform its services hereunder in a prompt and timely manner and in accordance with the project schedule as set forth in the Scope of Work, the IFB, and

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the Contractor's proposal, which may be conformed in the Agreement following negotiations. In the event of a conflict between those documents regarding the project schedule or payments, the Order of Precedence shall apply.

Force Majeure: Neither NCTD nor Contractor shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but shall not be limited to, abnormal weather conditions, floods, earthquakes, fire, epidemics, war, riots and other civil disturbances, strikes, lockouts, work slowdowns, and other labor disturbances, sabotage or judicial restraint. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement. Parties hereby agree to inform each other of any force majeure event within ten (10) calendar days of the party's knowledge of the event. Should a force majeure event occur that renders it impossible for either party to perform its obligations hereunder for a period of forty-five (45) or more consecutive days, the Parties agree to negotiate in good faith to amend the Agreement as may be necessary.

Contractor shall monitor the termination date of the Agreement and notify the NCTD Project Manager at least 60 days prior to the termination date if Contractor believes Contractor's work under the Agreement will extend beyond the termination date and necessitates an amendment.

5. Compensation

- a. Maximum Compensation: In no event shall the total amount paid for services rendered by Contractor exceed the sum of _____ (\$ _____) for the base term, plus Option Year 1 in the amount of _____ (\$ _____) and Option Year 2 in the amount of _____ (\$ _____), if Options are executed.

Increases that could cause the maximum compensation amount of the Agreement to increase must be documented in a written amendment to the Agreement. Should Contractor believe an increase to the maximum compensation amount is warranted and not due to events that were foreseeable or within Contractor's control, Contractor must request that an amendment be made PRIOR to incurring any additional costs.

- b. Method of Payment:

The method of payment for mobilization shall be the firm-fixed fee amounts set forth in the bid, which includes total compensation for all direct and indirect costs, overhead, fringe benefits, fees, delivery charges, fuel or other surcharges, taxes, and profit.

- c. The method of payment for hours spent on testing shall be up to the identified NTE amount identified for each year using the rates set forth in the bid. Contractor shall closely monitor NTE amounts and notify the NCTD Project Manager and Contract Officer immediately if, based on its progress compared to costs incurred by NCTD thus far for the testing hours, Contractor believes the NTE amount will be insufficient. If the amount will exceed the NTE due to no fault of Contractor, NCTD will determine whether to do an amendment to either increase the NTE or reduce the Scope of Work. Amounts invoiced shall be consistent with the hourly rates and pricing agreed to, which shall include total compensation for all direct and indirect costs, overhead, fringe benefits, fees, delivery charges, fuel or other surcharges, taxes, and profit. Payments will be made in arrears based on services and/or goods provided and actual costs incurred. NCTD will not pay for goods or services that are not specifically listed in the rate schedule.
- d. Travel Reimbursement: NOT APPLICABLE
- e. Cost Principles and Procedures: The Contractor agrees that 2 CFR 200 et seq. shall be used to determine whether individual items of cost are allowable.
- f. If Contractor or a subcontractor uses staff that are on the payroll of a temporary agency, whether such staff are treated as temporary employees or subcontractors, NCTD shall not be charged more

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than the amount invoiced by the temporary firm or subcontractor unless the arrangement is fully disclosed to NCTD and expressly agreed to in this Agreement or an executed amendment.

6. Invoicing

- a. Contractor shall be paid for services once rendered. **Advance payments are prohibited.**
- b. No payment will be made for Work not listed in the original Agreement or added to the Agreement by NCTD or for Work performed after the performance period. If payment will be based on hourly rates, timesheets must accompany each invoice with the applicable classifications listed clearly. If payment will be based on per unit prices for goods, the invoice shall break out each item purchased showing number of units and unit prices.
- c. Invoicing shall not be submitted more often than monthly. The Contractor shall submit an account statement with the invoice(s) on the 1st of every month. The format of the invoice to be submitted is subject to change based on the discretion of NCTD. Invoices may be mailed or delivered to 810 Mission Avenue, Oceanside, CA 92054, Attn: Accounts Payable or emailed to apclerks@nctd.org. Only one method of delivery may be used for the life of the Agreement. Contractor is to submit invoices in a form that clearly identifies the date that the Work was completed, a brief description of the Work performed, and the amount due. Contractor is to submit back-up documentation to support authorized expenses and direct costs such as equipment and travel. These items, if applicable, must be attached to each invoice. All invoices must reference the Agreement number and, if applicable, the Task Order number that authorized Work. No payment will be made for any Work performed outside of the performance period of the Agreement as may be supplemented by amendment.
- d. NCTD requires timely invoicing in order to accurately track the rate funds are being used on a project and to ensure expenses incurred in a particular fiscal year come from amounts budgeted for that fiscal year. Accordingly, Contractor expressly waives any right to seek otherwise allowable reimbursements or payments from NCTD pursuant to this Agreement for expenses incurred by Contractor or its subcontractors, which are not submitted to NCTD for payment either: 1) within 180 (one hundred and eighty) days after they are incurred, or 2) within 60 (sixty) days of NCTD's fiscal year end, which is June 30 of each year, whichever comes first. It is Contractor's responsibility to ensure its subcontractors and suppliers invoice Contractor within sufficient time for Contractor to meet these deadlines.

7. Prompt Payment

- a. The Contractor shall make prompt payment of all monies due and owed to DBE and non-DBE firms within 7 business days upon receipt of payment from North County Transit District (NCTD) as per Agreement. Payment of retention shall be made to all DBE and non-DBE subcontractors within 10 days after satisfactory completion of the subcontracted work. Contractor shall utilize the PlanetBids "My Contracts" portal to report monthly subcontractor payment reports during the reporting month. Contractor shall ensure that its subcontractors are added into the PlanetBids "My Contracts" portal once the Agreement has been awarded.
- b. Contractor shall submit a monthly subcontractor payment report on the PlanetBids "My Contracts" portal by the 20th of each month following the end of the reporting month and should reflect all payments made to subcontractor(s) through the last day of the previous month, even if the subcontractor(s) did not perform any work. Contractor shall ensure that its subcontractor(s) use the PlanetBids "My Contracts" portal to verify the payment amounts the Contractor submitted by the 25th of each month following the end of the reporting month.
- c. In order for the Contractor to submit a properly executed monthly subcontractor payments report, the Contractor must verify that their subcontractors' DBE certification is current at the time of payment. Certified Contractors can be found at the following State of California website: <https://dot.ca.gov/programs/civil-rights/dbe-search> . Failure to submit a proper substantiation of

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payment via PlanetBids will result in delayed payment. Failure to submit these reports in a timely manner may result in a penalty of \$10 per day for each payment not reported upon.

8. Title to Work Products or Goods Purchased

- a. Title to any work products or goods purchased by NCTD under this Agreement shall pass to NCTD at the time of NCTD's payment to Contractor.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply acceptance by NCTD, nor relieve the Contractor from the responsibility for strict compliance with the Agreement, provision of any applicable warranties, or for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the NCTD proper bills of sale or other applicable written instruments of title in a form as required by NCTD; said instruments shall convey to the NCTD title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- e. Contractor shall have title to and bear the risk of any loss of or damage to Work or goods purchased hereunder until they have been delivered, unloaded, and received by NCTD at the FOB Destination specified herein. Contractor's responsibility for loss or damage, except for loss or damage resulting from Contractor's negligence, shall cease when title passes to NCTD.

9. Availability of Funding

NCTD's obligation for payment of any agreement beyond its current fiscal year (July 1 to June 30) is contingent upon the availability of funding from which payment can be made. NCTD shall, at its sole discretion, have the right to terminate or suspend this Agreement or reduce compensation and service levels or Scope of Work proportionately upon thirty (30) days' written notice to the Contractor in the event that federal, state or other funding for the Agreement ceases or is reduced prior to the ordinary completion date of the Agreement. In the event of reduction of funding for the Agreement, NCTD and Contractor shall meet within ten (10) days of written notice to renegotiate the Agreement based upon the modified level of funding. In this case, if no agreement is reached between NCTD and Contractor within ten (10) days of the first meeting, either party shall have the right to terminate the Agreement within ten (10) days written notice of termination. In the event of termination of the Agreement in accordance with the terms of this section, Contractor shall be entitled to any payment offset to which NCTD may be entitled, for damages or otherwise, under the terms of the Agreement. In the event of termination of the Agreement pursuant to this section, in no event shall Contractor be entitled to any loss of profits on the portion of the Agreement so terminated, or to other compensation, benefits, reimbursements or ancillary services other than as expressly provided herein.

10. Performance of Work Within NCTD Property

- a. The Contractor is required to have an NCTD Access Authorization on hand prior to working on any NCTD site location. The Contractor must provide work plan submittals in accordance with the Property in Access Requests Process found on the GONCTD.com website (<http://www.gonctd.com/working-around-the-rails/#submittals>).
- b. NCTD is committed to maintaining a safe and respectful environment at all its facilities and properties for the benefit of its employees, customers, business partners, and visitors. To support that goal, NCTD requires that the Contractor adhere to reasonable standards of conduct while working on or in NCTD facilities and property. Additionally, use of any NCTD systems, tools, or physical assets must likewise be in accordance with established requirements. Specific areas of compliance include but are not limited to:

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- i. NCTD Identification Badges – For safety and security purposes the Contractor must comply with NCTD requirements regarding utilization of Identification Badges while on/in NCTD properties/facilities as requested by NCTD staff.
- ii. No Discrimination/Harassment – Contractor is expected to conduct themselves in a professional, ethical, and respectful manner at all times, and refrain from any conduct or actions that could constitute harassment or discrimination towards employees, customers, business partners, visitors.
- iii. Drug/Alcohol – Contractor shall maintain compliance with NCTD's status as a Drug Free workplace.
- iv. Electronic Systems – If Contractor will utilize NCTD electronic systems, including computers, telephones, facsimile machines, etc., shall ensure they are utilized solely for business purposes related to direct fulfillment of contracted services. Additionally, Contractor shall comply with any instructions or requirements of NCTD Information Technology staff related to use of said systems.

Based upon individual contract parameters, solely in NCTD's determination, Contractor may be required to provide additional information to NCTD to ensure compliance with the foregoing items, and/or other reasonable business and operational needs.

11. Contractor Responsibilities

- a. Site Security - The Contractor, at his sole cost, shall be solely responsible for the security of Contractor's facilities, materials, and equipment at the work site. The Contractor shall understand that NCTD shall not be responsible for such security measures, and the Contractor shall take necessary and prudent measures to ensure the security of Contractor's facilities, materials, and equipment; including but not limited to security fencing, locked storage facilities, secured equipment areas, posted security personnel, and other measures deemed necessary by the Contractor. The cost for any damaged, vandalized, or stolen items shall be borne solely by the Contractor.
- b. Work and Materials - Until the final acceptance of all the Work specified in the Agreement, the Contractor shall have the charge and care of the Work and of the materials to be used therein or materials that have been furnished by NCTD, and shall bear the risk of injury, loss or damage to any part thereof due to any cause, whether arising from the execution or from the non-execution of the Work. The Contractor shall rebuild, repair, restore and make good all losses or damages to any portion of the Work or the materials occasioned by any cause before its completion and acceptance and shall bear the full expense thereof. In the event the Contractor fails with respect to its obligations under this section, NCTD may withhold a sufficient amount/amounts of any payment/payments otherwise due to the Contractor necessary and sufficient to repair and remedy said losses or damages pursuant to its rights under this document. The suspension of Work for any cause shall not relieve the Contractor of the responsibility for performing the services and providing the materials as specified herein. Unless otherwise specified in the Agreement, the Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up, and completion of the Work. Such support that may need to be provided after normal working hours will be provided by the Contractor at its expense.
- c. Safety - Payment for performing all work necessary to provide safety measures shall be included in the prices bid for other items of work except where separate bid items for excavation safety are provided.

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- d. Warranty of the Work - The Contractor warrants to NCTD that all materials and equipment furnished under the Agreement will be of highest quality and new unless otherwise specified by NCTD, free from faults and defects and in conformance with the Agreement. All materials and equipment not conforming to these standards shall be considered defective. If required by NCTD's designated representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of all supplied materials and equipment. The work shall be safe, substantial and durable construction in all respects. The Contractor shall assume responsibility for all equipment and services provided under the Agreement, whether provided by the Contractor or by a subcontractor of its selection. If the Contractor fails or refuses to comply with its obligations under this warranty, NCTD shall be entitled to all costs and expenses, including attorney's fees and expert costs reasonably incurred by reason of the said failure or refusal.

12. Disadvantaged Business Enterprises (DBEs) and Nondiscrimination

- a. Whether or not a DBE goal was set for the procurement, or a DBE commitment is made for the Agreement or a Task Order, Contractor shall submit a document entitled "Final Utilization Report" ("the FUR") within 90 days after the date all goods and services called for in the Agreement or each Task Order are completed. NCTD is required to track use of DBE firms, whether or not federal funding is used. Contractor shall comply with the exhibit to this Agreement entitled "Notice Regarding Disadvantaged Business Enterprises Requirements and Instructions."
- b. NCTD requires Contractor to comply with Title VI and Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and Housing Act, as amended, and all other applicable non-discrimination laws. NCTD will not tolerate illegal discrimination or harassment by Contractor.
- c. NCTD, in accordance with the provisions of Title VI of the Civil Rights Act of 1964, 49 CFR Part 21, and 28 CFR section 50.3, hereby notifies Contractor that Contractor shall affirmatively ensure that for any contract entered into as a result of this Agreement, DBEs will be afforded full and fair opportunity to work on NCTD projects and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

13. Insurance

Contractor shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection with, the performance of the Work hereunder by Contractor, its agents, representatives, or employees. Proof of insurance shall be submitted to NCTD within five (5) working days of NCTD's request and is required before the commencement of Work.

a. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VI. Carriers must be licensed to do business in California and maintain an agent for service of process within California. Exceptions may be made for insurers when not specifically rated such as the State Compensation Insurance Fund, conglomerates such as Lloyds of London, or for self-insured entities.

b. Pass-Through Costs to NCTD

To the extent Contractor elects to pass through insurance premium costs to NCTD, Contractor shall not charge NCTD for any insurance costs that are not directly attributable to the Work. Contractor shall not pass through insurance costs to NCTD that are attributable to, or overlap with, work performed for Contractor's other project or clients or are included in Contractor's overhead rate.

c. Notice of Termination, Cancellation, or Change

Should any of the insurance policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions and sent to NCTD. Contractor shall notify NCTD immediately following Contractor's first notice or awareness of any proposed or actual termination, cancellation, or change in its insurance coverage. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be amended or canceled, except after 30 days' prior written notice has been given to NCTD. Notice of cancellation sent by email to insurance@nctd.org shall be sufficient notice.

d. Failure to Provide Insurance

Failure to provide and continue in force any insurance as described in this Insurance Section shall be deemed a material breach of this Agreement, which NCTD may deem to constitute cause for immediate termination. NCTD reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined herein. If contractor fails to maintain the insurance as set forth herein, NCTD shall have the right, but not the obligation, to purchase said insurance at Contractor's expense and to withhold the expense of such insurance from any payments otherwise due to Contractor.

e. Certificates of Insurance and Endorsements

Contractor shall furnish NCTD with Certificates of Insurance and any required endorsements affecting coverage required by this section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Endorsements must specifically state that they modify the policy language. All certificates and endorsements are to be received and approved by NCTD before work commences. Contractor shall ensure that the representations made on the Certificate of Insurance and Endorsements are true and correct. Complete policies of insurance shall be provided to NCTD upon request and no later than five (5) days after such request. Failure to provide NCTD a copy of the insurance policies required in this contract shall be deemed a material breach of contract, which shall be deemed at the option of NCTD to constitute a cause for immediate termination hereof. The coverage forms and related endorsements required herein required by Contractor shall conform to the Insurance Services Office (ISO) 2013 Edition (or the latest revision available).

f. Commercial General Liability and Auto Liability Endorsements

The Commercial General and Auto Liability policies shall contain, or be endorsed to contain, the following provisions:

NCTD, its directors, officers, agents and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. The commercial general liability policy does not need to cover products and completed operations when services Contractor will perform on the Work are not connected to construction or maintenance.

Commercial general liability coverage shall be provided in the form of an additional insured policy endorsement to the Contractor's insurance at least as broad as ISO CG 20 10 and CG 20 37 forms, respectively.

For any claims related to this Work, the Contractor's insurance coverage shall be primary insurance as respects NCTD, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Contractor shall provide NCTD a conforming ISO CG 20 01 Endorsement for Commercial General Liability.

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Contractor agrees to waive all rights against NCTD and its directors, officers, agents and employees for recovery of damages to the extent these damages are covered by the Commercial General Liability and Auto Liability insurance required pursuant to this contract. Contractor shall provide NCTD a conforming ISO CG 24 04 Endorsement for Commercial General Liability and ISO CA 04 43 Endorsement for Auto Liability, respectively.

g. Insurance Certificate Submittals

NCTD uses PlanetBids to track and verify insurance coverage. Contractor shall include the Agreement number and/or task order number on all insurance-related correspondence submitted to PlanetBids (i.e., the insurance certificate itself).

Initial Certificate Submittal

After Contractor's receipt of the Notice of Intent to Negotiate, Contractor shall submit its certificates of insurance through the PlanetBids portal established for NCTD. NCTD will not execute the Agreement and Contractor shall not commence work unless Contractor has submitted compliant Certificates of Insurance (COIs) and endorsements have been received, and NCTD has deemed the Contractor as compliant with the insurance requirements.

Renewal Certificate Submittals

Contractor shall cause its insurance agents to comply with requests for updated information from PlanetBids on no less than an annual basis. Contractor is responsible for ensuring that its agents send NCTD updated certificates of insurance throughout the term of the Agreement via PlanetBids. NCTD reserves the right to terminate this Agreement or to withhold payments to Contractor if Contractor fails to maintain compliance with the insurance requirements of this Agreement, including providing current certificates of insurance and endorsements to PlanetBids.

h. No Limitation on Liabilities and Obligations

The requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by NCTD are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement, including, but not limited to, the provisions concerning indemnification.

The specified insurance limits are minimum amounts to be provided, and any insurance maintained by Contractor above such limits shall provide protection to NCTD and all additional insureds to the same extent as other insurance provided by Contractor.

i. Coverage for Subcontractors

Insurance required of the Contractor shall be provided by all subcontractors or by Contractor on behalf of all subcontractors to cover their services performed under this Agreement. Contractor shall not require subcontractors to maintain insurance amounts that are disproportionate to the risk exposure, scope of work and/or dollar value of work subcontracted. Contractor shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to any subcontractor.

j. No Waiver of Requirements

Acceptance by NCTD of a certificate or endorsement that varies from the requirements in this section shall not constitute a waiver by NCTD of strict compliance with the provisions herein.

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k. waiver and release of liability for auto liability and/or Workers' Compensation insurance

Notwithstanding the foregoing section, Contractor may be granted a waiver of the requirements in this section under the following conditions:

- If Contractor does not purchase Workers' Compensation insurance because it has no employees or it has fewer employees than is mandated by the Workers' Compensation statutes, regulations, and applicable to employers in the state of California, then it will be required to sign the Workers' Compensation Waiver and Release of Liability Agreement in order to be allowed to perform work or services for NCTD. The document is available from the Procurement and Contract Administration Division.
- If Contractor does not purchase Auto Liability insurance because it has no vehicles that will be used in the course of performing work pursuant to this Agreement, and its business will not utilize hired or non-owned vehicles in the course of performing work pursuant to this Agreement in the state of California, then it will be required to sign the Automobile Liability Waiver and Release of Liability Agreement in order to be allowed to perform work or services for NCTD. The document is available from the Procurement and Contract Administration Division. Until the Waiver is signed or Auto Liability insurance consistent with this Agreement is purchased and approved by NCTD, Contractor is not authorized to use a vehicle in the course of performing work pursuant to this Agreement.

l. Self-Insured Retentions

Any self-insured retentions must be declared to NCTD. At the option of NCTD, the Contractor shall provide a financial guarantee satisfactory to NCTD guaranteeing payment of losses and related investigations, claim administration and defense expenses.

m. Claims-Made Coverages

If any of the Contractor's insurance is written on a claims-made form:

- The insurance coverage period must commence before the effective date of the Agreement or the beginning of work performed pursuant to the Agreement.
- Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of work under the Agreement.
- If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Contractor must purchase an extended reporting coverage for a minimum of three years after completion of work under the Agreement.
- A copy of the claims reporting requirements must be submitted to NCTD for review.

n. Cross-Liability Coverage

If Contractor's liability policies do not contain the standard ISO separation of insured's condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

o. Task Order-Required Insurance

p. Additional Insureds

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The Commercial General Liability, Auto Liability, and if applicable, the Pollution Liability policies shall name in the endorsements and schedules as additional insured, North County Transit District (NCTD) and its directors, officers, agents, employees, and designated volunteers. All Agreements requiring railroad protective liability insurance shall name in the endorsement and schedules as additional insured the following entities, including their directors, officers, agents and employees as their interests may appear:

- North County Transit District (NCTD)
- Bombardier Transportation (Holdings) USA, Inc.
- Burlington Northern Santa Fe Railway (BNSF)
- AMTRAK
- San Diego Metropolitan Transit System (MTS)
- San Diego Trolley, Inc. (SDTI)
- San Diego Transit Corporation (SDTC)

q. Minimum Policy Limits and Requirements

Prior to performing any Work, Contractor shall provide proof and maintain limits no less than the following coverages.

Insurance Type	Requirements	Limits
Commercial General Liability (CGL)	Coverage shall conform to ISO Form CG 00 01 covering CGL on an "occurrence" basis. Policy shall include all elements of Coverages A, B and C.	Limits no less than \$3,000,000 - per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall be twice the required occurrence limit. The policy shall be issued on an occurrence basis.

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Insurance Type	Requirements	Limits
Automobile Liability	Coverage shall conform to ISO Form CA 00 01 covering any auto (Code 1).	<p>Limits no less than \$2,000,000 - per accident for bodily injury and property damage.</p> <p>The policy shall be issued on a combined single limit.</p> <p>For services rendered within 50 feet of the railroad tracks, Contractor shall provide Automobile Liability Insurance with limit of no less than \$2,000,000 per accident for bodily injury and property damage.</p>
Workers' Compensation and Employer's Liability	<p>Insurance shall cover or insure under the applicable laws relating to workers' compensation insurance, all employees working on or about the Right-of-Way, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof.</p> <p>Not required for sole proprietors or companies with no employees. Verifiable proof of exemption shall be required by Contractor.</p>	<p>As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident; \$1,000,000 policy limit bodily injury by disease; and \$1,000,000 each employee bodily injury by disease.</p> <p>For services rendered within 50 feet of the railroad tracks, Contractor shall provide Employer's Liability Insurance with limit of no less than \$2,000,000 per accident; \$2,000,000 policy limit bodily injury by disease; and \$2,000,000 each employee bodily injury by disease.</p>

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Insurance Type	Requirements	Limits
Professional Liability	Policy to cover losses arising from wrongful acts and pollution incidents whenever committed in the performance of professional services under this Agreement.	Limits no less than \$1,000,000 per claim and annual aggregate limit of \$2,000,000.
Railroad Protective Liability Insurance	<p>Coverage shall conform to ISO Form CG 24 17.</p> <p>Policy to cover the operations performed by Contractor or any subcontractor or subcontractor of Permittee within 50 feet vertically or horizontally of railroad tracks.</p> <p>The RRL Policy shall be issued in the names of the NCTD, MTS, SDTI, SDTC, BNSF, Transit America, and AMTRAK.</p> <p>The Railroad Protective Liability Insurance policy shall have a term covering the Agreement or Task Order period of performance. The Contractor shall be listed as the covered firm with automatic coverage included for Contractor's subcontractors.</p>	<p>Limits no less than \$3,000,000 per occurrence, combined single limit, for Coverages A and B. An annual aggregate of \$6,000,000 shall apply.</p> <p>Additionally, Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy.</p>

14. Organization and Communication

- a. Contractor shall assign _____ as Project Manager who can be reached at _____ or by email at _____. The Project Manager shall not be removed from the Work or reassigned without the prior written consent of NCTD. In the event the Project Manager leaves Contractor's employ, Contractor shall notify NCTD and designate a new Project Manager in writing that meets NCTD's requirements within five calendar days.
- b. NCTD shall assign _____ as Project Manager who can be reached at _____ or by email at _____ to provide direction, coordinate procedures and manage all performance and technical issues of the Agreement.
- c. The key personnel indicated in the Contractor's proposal shall perform the Work. Replacements required due to unforeseen circumstances may be accepted by NCTD. Such acceptance, however, will not imply that NCTD has evaluated the replacement to be equally, less, or more qualified than the key person replaced. Key personnel identified in the proposal shall not be replaced unless such replacement is approved in advance by NCTD in writing. Resumes of replacements shall be submitted to NCTD with all applicable information. NCTD will not compensate Contractor for Work performed by unauthorized staff. Replacements of personnel on Work for which NCTD is paying hourly rates shall require prior approval by NCTD. In no event shall such a replacement cause NCTD to pay a higher hourly rate than previously approved.
- d. Subcontractors not originally listed in the Proposal as part of Contractor's team shall be added only by amendment to this Agreement. An amendment to the Agreement shall be prepared by NCTD and executed by both Parties before performance of services or NCTD will not be required to pay for the subcontractor's expenses incurred.
- e. NCTD's Contracts Officer identified below is solely responsible for the business relationship with the Contractor and for contractual issues and changes, the Contracts Officer is the only one authorized to receive from or transmit to the Contractor, written correspondence regarding any questions, contractual clauses, items, disputes, requests, etc., relating to the contents of the Agreement, all of which are defined as Official Correspondence.

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NCTD	CONTRACTOR
North County Transit District 810 Mission Avenue Oceanside, CA 92054	
Attn:	Attn:
Email:	Email:
Tel:	Tel:

Transmittal of Official Correspondence by either party may be by email or the USPS, if desired, use of USPS may be by certified mail, return receipt requested, postage prepaid method.

15. Changes to the Agreement

If a revision to the content of the Agreement is requested by Contractor or NCTD and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner:

- a. A letter outlining the requested changes shall be forwarded to the NCTD Contracts Officer by the Contractor or NCTD Project Manager (see Agreement section titled, "Organization and Communication").
- b. An amendment to the Agreement shall be prepared by NCTD and executed by both Parties before performance of any revised services or adjustment of rates and may require Board of Directors ("Board") approval. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement. Payment may be delayed or denied for Work performed without an authorizing amendment.
- c. This Agreement shall only be amended, modified or changed in writing, executed by authorized representatives of the Parties, with the same formality as this Agreement was executed. Any attempt to amend, modify, or change this Agreement by either an unauthorized representative or unauthorized means shall be void.

16. Labor Compliance

- a. The Work, or a portion of the Work required under this Agreement, may fall into the category of service deemed to be public works pursuant to Federal and California requirements. If the Work is being performed as part of a "public works" project, as defined by Federal or California laws, and if the total compensation is \$1,000 or more as to California requirements, and \$2,000 or more as to Federal Requirements, Contractor, and its subcontractors (when applicable), will be required to comply with all of the terms and conditions (including Federal and California prevailing wage requirements) prescribed for the performance of public works as defined in applicable law. In all instances where Federal and California Prevailing Wages for a given craft differ, the higher prevailing wage shall be paid. It shall be mandatory upon Contractor and its subcontractors (when applicable) to pay not less than the said specified rates to all workers employed by them in the performance under the Agreement to the extent required.
- b. Contractor and its subcontractors, regardless of tier, shall not be qualified to engage in the performance of any contract for public work, as defined in Labor Code section 1771.1, subdivision (a), unless currently registered with the California Department of Industrial Relations (DIR) and qualified to perform public work pursuant to Section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)). Use of unregistered contractors or subcontractors may result in termination of this Agreement for cause by NCTD.
- c. Contractor acknowledges that any Work that qualifies as a "public work" within the meaning of California Labor Code Section 1720 shall cause Contractor, and its subcontractors at every tier to comply with the provisions of California Labor Code Sections 1775 et seq. Contractor agrees to comply with Labor Code Section 1776 regarding retention and inspection of payroll records and

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noncompliance penalties, Labor Code Section 1777.5 regarding employment of registered apprentices, and Labor Code Section 1813 regarding forfeiture for violations of the maximum hours per day and per week provisions contained in the same chapter. Contractor and any of its subcontractors working on the public work will be required to input and submit all applicable Certified Payrolls (CPRs) and accompanying documentation to DIR for monitoring and compliance on an ongoing basis while work is being performed. A mistake, inadvertence, or neglect by the Contractor in failing to pay the correct rates of prevailing wage will be remedied solely by the Contractor and will not, under any circumstances, be considered as the basis of a claim against NCTD.

- d. Contractor is hereby put on notice that many NCTD projects qualify as public works projects per the DIR and Contractor will therefore be required to determine whether the scope of services it provides on particular NCTD projects fall under a classification that would require payment of prevailing wages. The California Labor Code (Sections 1720-1861) includes classifications for pre-construction and post-construction activities. If Contractor will perform services for NCTD that require payment of prevailing wages or intends to perform services that would be covered by California Labor Code, it is required to register with the DIR in order to be compliant with the law.
- e. In the event the Parties disagree as to whether a particular person is performing work subject to prevailing wage, NCTD will make a decision regarding whether Contractor is in compliance with the law consistent with guidance from the Department of Labor. Contractor may ask DIR for an alternate determination within thirty (30) days of NCTD notification of its decision. In the event that Contractor engages in the performance of a public work under this Agreement as defined by Labor Code Section 1770 et seq., Contractor shall be required to cause such employees who are entitled to prevailing wages, to be paid the required wage amounts pursuant to applicable federal or state law.
- f. Pursuant to Labor Code Section 1775, the Contractor and any applicable subcontractor shall forfeit to NCTD or the DIR a penalty of not more than \$200 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the Agreement in violation of the requirements of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. Should Contractor fail to provide CPRs as required by Labor Code section 1776(a) and (h) within ten days following a request from NCTD or its labor compliance Contractor, Contractor shall, as a penalty to NCTD, be subject to a forfeiture of \$100 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. In addition, if following an investigation by NCTD or its labor compliance Contractor (or as may be directed by the DIR or other relevant enforcing agency) a determination is made that Contractor is not in compliance with applicable Labor Code sections, NCTD may withhold such payments or penalties as appropriate pursuant to Labor Code Sections 1726 and/or 1771.6. This section does not provide an exhaustive list of Labor Code requirements. Other requirements include, but are not limited to, those concerning payment of overtime and benefits, as well as apprenticeship ratios and documentation. Withholding of payment for failure to comply with Agreement provisions, and penalties and forfeitures for failure to comply with applicable Labor Code provisions may be imposed by NCTD against Contractor.
- g. If this Agreement is federally funded, the applicable Federal Davis-Bacon Act rates are attached to this Agreement. Whether or not federal funding will be used, the requirements of California Labor Code section 1720 et seq. and 1770 et seq. shall apply if any of the Work under this Agreement qualifies as a public work.
- h. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Work available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the site of any Work. Contractor shall defend, indemnify and hold NCTD, its elected officials, officers, employees and

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agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the prevailing wage laws.

- i. Labor compliance and prevailing wage monitoring shall be performed on behalf of NCTD by a company known as Gafcon. Contractor shall ensure that it and any of its subcontractors performing work subject to prevailing wage laws enter required data into DIR's database and PlanetBids so that Gafcon and NCTD can monitor compliance with California Labor Code requirements and if applicable, the Federal Davis-Bacon Act. Contractor shall comply with requests from Gafcon for data and documentation necessary to monitor compliance. In accordance with California Labor Code section 1776, certified payrolls must be submitted per the stricter of regulations, Federal, State, or Local, basis. Contractor and all subcontractors awarded a contract must furnish electronic certified payroll records to the Labor Commissioner. In addition, a copy of certified payrolls must be furnished to GAFCON at 5960 Cornerstone Court West, Suite 100, San Diego, CA 92121, Attention: Lizette Rodriguez.
- j. Prevailing Wage Determinations can be accessed at the below websites:
 - California General Prevailing Wage Determinations: [General prevailing wage determinations: 2022-1 journeyman determinations \(ca.gov\)](#)
 - San Diego County Prevailing Wage Determinations: [Index 2022-1 San Diego basic trade journeyman rates \(ca.gov\)](#)
 - Davis-Bacon Prevailing Wage Determinations (locate most recent determination for San Diego County): [SAM.gov | Search](#)

17. Federal Requirements

All contractual provisions required by the Department of Transportation, as set forth in FTA Circular 4220.1F, must be in all of Contractor's subcontracts. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NCTD requests that would cause NCTD to be in violation of the FTA terms and conditions

Inasmuch as the services herein described are to be purchased with Federal assistance authorized by the Department of Transportation and Federal Transit Administration (FTA) laws and regulations codified at 49 USC § 5301 et seq.; or Title 23, United States Code (Highways); or the Infrastructure Investment and Jobs Act of 2021, Public Law No. 117-58, November 15, 2021; or the Transportation Equity Act for the 21st Century, Pub. L. 105-178, June 9, 1998, 23 USC § 101 note, as amended by the TEA-21 Restoration Act, Pub. L., 105-206, July 22, 1998, 23 USC § 101 note, (TEA-21), Moving Ahead for Progress in the 21st Century Act (MAP 21), Pub. L. 112-141, July 6, 2012, and other further amendments thereto, Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended, or other Federal enabling laws administered by FTA and guidance thereto, including without limitation FTA Circular 4220.1F and amendments thereto, and 2 CFR Part 200, the Contractor will be required to comply with all terms and conditions prescribed for third party contract in a grant contract between the United States Department of Transportation and NCTD and to flow all applicable federal provisions down to subcontractors at every tier. Federal provisions applicable to this Agreement and third party contracting in general are provided in the IFB and this Agreement.

Specific guidelines shall be those prescribed by the most recent Federal Transit Administration Master Agreement (Form FTA-MA) and Federal Transit Administration (FTA) Circular 4220.1 F, "Third-party Contracting Requirements" In the event of a conflict between FTA Circular 4220.1F and 2 CFR Part 200, 2 CFR Part 200 shall control and supersede.

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18. Sanctions, Fines and Additional Costs by Court Ruling

The Contractor shall be responsible for sanctions, fines, interest and any other additional costs imposed by a court ruling, which results from negligence, mismanagement and/or delays that are not directly and unequivocally attributable to NCTD employees or agents.

19. Compliance with Law

- a. Contractor shall comply with all applicable laws, ordinances, codes and regulations of the Federal, California, and local governments relating to the performance of the Work, including any changes to such applicable laws, ordinances, codes and regulations of the Federal, California, and local government during the performance of the Work. To the extent that the Federal requirements provided in herein do not directly apply to the Work, Contractor shall ensure that the Work, including but not limited to any and all work-product created under this Agreement, shall permit compliance with those requirements.
- b. Contractor shall be aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, contractors, and subcontractors that are included in this Agreement.
- c. By executing this Agreement Contractor certifies that it is (i) not owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.) or (2) not supplying any product for use on the Federal public works project that is produced or manufactured in a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the U.S.T.R. Countries currently listed on the Priority Watch List by the U.S.T.R. are: Argentina, Chile, China, India, Indonesia, Russia, Saudi Arabia, Ukraine, and Venezuela. This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001. Contractor and any of its subcontractors shall provide immediate written notice to NCTD if, at any time, it learns that its certification was erroneous by reason of changed circumstances.
- d. Contractor shall not knowingly enter into any subcontract under this Agreement: (i) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; or (ii) for the supply of any product for use on the Federal public works project under this Agreement that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. Contractor may rely upon the certification in this section unless it has knowledge that the certification is erroneous. This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor or its subcontractor knowingly rendered an erroneous certification, in addition to other remedies available to NCTD, NCTD may cancel this Agreement at no cost. The definitions pertaining to this section are those that are set forth in 49 CFR 30.7-30.9.
- e. Contractor will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations, the US Department of State's International Traffic in Arm Regulations, and other applicable export laws. Contractor will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of embargoed countries or denied entities or persons except in accordance with all then current applicable US government export laws and regulations.
- f. Certification Clause Contractor Must Pass Through to Subcontractors:

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Contractor agrees to insert the remainder of this subsection, without modification, including this paragraph, in all solicitations and subcontracts:

(1) Subcontractor, by submission of an offer and/or execution of a contract with a contractor, certifies that it is (i) not an owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.) or (2) not supplying any product for use on the Federal public works project that is produced or manufactured in a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the U.S.T.R.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(2) Subcontractor shall provide immediate written notice to the Contractor if, at any time, subcontractor learns that its certification was erroneous by reason of changed circumstances.

(3) A contractor shall not knowingly enter into any subcontract under this contract: (i) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; or (ii) for the supply of any product for use on the Federal public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. The contractor may rely upon the certification in paragraph (g)(1) of this clause unless it has knowledge that the certification is erroneous.

(4) Unless the restrictions of this clause have been waived under the contract for the Federal public works project, if a contractor knowingly enters into a subcontract with a subcontractor that is a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or that supplies any product for use on the Federal public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., the Contract Officer may direct, through higher-tier contractors, cancellation of this contract at no cost to the government.

(5) Definitions. The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7-30.9.

(6) The certifications in this section are a material representation of fact upon which reliance was placed when making the award. If it is later determined that a subcontractor knowingly rendered an erroneous certification, in addition to other remedies available to the government, the government Contracts Officer may direct, through higher-tier contractors, cancellation of this subcontract at no cost to the government.

20. Performance Evaluation

In order to establish a written record of performance, NCTD shall at a minimum conduct a review and evaluation of Contractor's performance at time of closeout of this Agreement. This review shall assist

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NCTD and Contractor in determining the quality and level of performance and as a reference for making responsibility determinations on future procurements.

Contractor will be evaluated on various factors, including the following: value of services, technical performance, fair and reasonable cost, timeliness, planning and implementation, quality of service, compliance, and business relations. Contractors who are found to be deficient in their evaluations will be sent a copy of their evaluation. Evaluations shall be kept on file at NCTD for reference consistent with NCTD's [Records Retention Schedule](#).

21. Escalation of Issues

In the event issues arise that have not been satisfactorily addressed by the Project Managers of the Contractor and NCTD's Contracts Officer, the issue is to be escalated to the following:

NCTD	CONTRACTOR
Julie D. Wiley	
Chief of Procurement & Contract Administration	

22. Indemnification

Indemnity. Contractor shall, to the fullest extent permitted by law, hold harmless, protect, defend and indemnify NCTD and its Board of Directors and each member of the Board, officers, agents and employees, representatives and their successors and assigns ("NCTD" and/or "Indemnified Parties"), from and against any and all losses, liabilities, claims, suits, damages, expenses and costs, including reasonable attorney's fees and costs, and expert costs and investigation expenses, arising out of or attributable, in whole or in part, from the performance or failure to perform by Contractor, its employees, representatives, subcontractors, or agents regardless of whether or not such claim, loss or liability is caused, in part by a party indemnified hereunder. Insurance amounts required by NCTD shall not serve as a cap on Contractor's liability.

General Indemnity Provisions. This indemnity is in addition to any other rights or remedies that NCTD may have under the law or this Agreement. In the event of any claim or demand made against any party that is entitled to be indemnified hereunder, NCTD may, at its sole discretion, reserve, retain or apply any monies due to Contractor under this Agreement for the purpose of resolving such claims; provided however, that NCTD may release such funds if Contractor provides NCTD with reasonable assurances of protection of NCTD's interest. NCTD shall, in its sole discretion determine whether such assurances are reasonable.

Contractor agrees that its duty to defend the Indemnified Parties arises upon an allegation of liability based upon its performance under this Agreement by Contractor, its officers, agents, representatives, employees, subcontractors, or anyone for whom Contractor is liable and that an adjudication of Contractor's liability is not a condition precedent to Contractor's duty to defend. Contractor shall defend, at its own cost, expense and risk, with counsel of NCTD's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Indemnified Parties. To the extent of its liability, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the Indemnified Parties, in any such suit, action or other legal proceeding. Contractor shall reimburse the Indemnified Parties for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

This section of the Agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. This section of the Agreement shall survive in perpetuity.

Comprehensive Environmental Responses, Compensation, and Liability Act. Contractor acknowledges that the indemnifications contained herein are intended, in part, to operate as indemnifications under

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Section 9607(e)(1) of the Comprehensive Environmental Responses, Compensation, and Liability Act (42 USC Section 9601, et seq.) as may be hereinafter amended.

Public Records: Contractor agrees to indemnify and defend NCTD in the event NCTD withholds production of records that Contractor has marked "Confidential" "Trade Secret" "Proprietary", or similar designations, that are responsive to a Public Records Act request pursuant to California Government Code sections 6250, et. seq. or a Freedom of Information Act request.

Prevailing Wage. Contractor shall defend, indemnify and hold NCTD, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with prevailing wage laws, if applicable.

Intellectual Property. The Contractor warrants that the processes, design, equipment, materials, or devices used in providing the services shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against NCTD the Contractor shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by NCTD, and indemnify and hold harmless NCTD, its subsidiaries, agents and employees from all liability, damages, costs, and expenses associated therewith, including, without limitation, defense costs and attorney fees.

Confidential Materials. Access to government records is governed by the laws of the State of California under the California Public Records Act (Gov. Code 6250, et seq.) ("Act"). Solicitation forms submitted to NCTD are public records and may, therefore, be disclosed in accordance with the Act. Any such proprietary information, trade secrets or confidential commercial and financial information which a Contractor believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not ensure confidentiality. The Contractor shall submit proprietary information, trade secrets or confidential commercial and financial information, which a Contractor believes should be exempted from disclosure, in a separate volume specifically identified and marked as. NCTD will release cost or price forms in response to a request pursuant to the Act so long as the Agreement for which the price forms were submitted has already been executed and the cost or price form does not contain trade secrets as defined by the Civil Code. Price forms submitted to NCTD are public records and may, therefore, be disclosed in accordance with the Act.

23. Termination

- a. Mutual Termination: This Agreement may be terminated by mutual agreement of the Parties. Any other act of termination shall be in accordance with the following clauses in this section.
- b. Termination for Convenience: NCTD may terminate performance of the Work called for by the Agreement Documents in whole or, from time to time, in part, if NCTD determines that a termination is in NCTD's interest. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience, the extent of termination, and the Effective Date of such termination. After receipt of Notice of Termination, and except as directed by NCTD, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 - i. Stop Work as specified in the Notice.
 - ii. Complete any Work that may be specified to be completed in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Agreement Documents.
 - iii. Leave any property upon which the Contractor was performing Work in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

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- iv. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.
 - v. Place no further subcontracts or orders, except as necessary to complete any continued portion of the Work.
 - vi. Submit to NCTD, within ten (10) calendar days from the effective date of the Notice of Termination, all of the usual documentation called for by the Agreement Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of NCTD's exercise of its right to terminate the awarded Agreement pursuant to this clause, which costs the Contractor is authorized under the Agreement Documents to incur, shall: (i) be submitted to and received by NCTD no later than thirty (30) calendar days after the effective date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by NCTD's Termination for Convenience."
- c. Termination for Cause:
- i. NCTD may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include: (a) a material violation of any of the covenants, agreements, or stipulations of this Agreement by Contractor, (b) Contractor, through any cause, failing to fulfill in a timely and proper manner its obligations under this Agreement, (c) any act by Contractor exposing NCTD to liability to others for personal injury or property damage, or (d) if Contractor is adjudged bankrupt, Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor's insolvency. Written notice by NCTD of termination for cause shall contain the reasons for such intention to terminate and shall specify the effective date thereof. Unless prior to the effective date of the termination for cause the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall cease and terminate on the effective date specified in the written notice by NCTD.
 - ii. In the event of such termination, Contractor shall be paid the reasonable value of satisfactory services rendered up to the date of receipt of the notice of termination in accordance with this Agreement, less any payments theretofore made, as determined by NCTD, not to exceed the amount payable herein, and Contractor expressly waives any and all claims for damages or compensation arising under this Agreement in the event of such termination, except as set forth herein.
 - iii. In the case of a termination of the Agreement for cause, Contractor agrees that NCTD may procure the materials and services to complete the Work from other sources at the sole discretion of NCTD and may be deducted from the unpaid balance due the Contractor, or, if applicable, may collect against the Contractor's bond of surety, or may invoice the Contractor for all costs so paid. The prices paid by NCTD to complete the Work shall be considered the prevailing market price at the time such purchase is made or such Agreement is entered into. The Contractor shall not be relieved of any responsibility under the Agreement for Work accepted by NCTD before the termination of the Agreement. Furthermore, the termination of the Agreement shall in no way relieve the Contractor from any of its covenants, undertakings, duties and obligations under this Agreement nor limit the rights and remedies of NCTD hereunder in any manner whatsoever.
 - iv. If it is later determined by NCTD or any other decision maker including a court of competent jurisdiction and/or arbitrator, that the Contractor had an excusable reason for not performing, such as force majeure events which are not a default; NCTD, after setting up a new delivery or performance schedule, may allow the

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Contractor to continue the Work, or treat the termination as a termination for convenience, at NCTD's sole option.

- d. Contractor may terminate the awarded Agreement upon ten (10) calendar days written notice to NCTD, whenever: (1) the entire Work has been suspended for ninety (90) consecutive days through no fault or negligence of the Contractor, and notice to resume the Work or to terminate the Agreement has not been received from NCTD within this time period; or (2) NCTD should fail to pay the Contractor or any substantial sums due it in accordance with the terms of the Agreement and within the time limits prescribed. In the event of such termination, the Contractor shall have no claims against NCTD except for Work performed as of the date of termination.
- e. Opportunity to Cure: In the case of a notice of termination for breach or default by either Party, the Party alleging cause for termination will allow the defaulting Party ten (10) days in which to cure the defect, except that if the nature of the cure requires more than ten (10) days to complete, then the cure period may be mutually agreed to by the Parties to allow completion of the cure to be diligently pursued. If the defaulting Party fails to remedy the breach or default of any of the terms, covenants, or conditions of the Agreement within ten (10) days or other cure period after receipt by the defaulting Party of a written notice setting forth the nature of said breach or default, the alleging Party shall have the right to terminate the Agreement. Any such termination by NCTD for default by Contractor shall not in any way operate to preclude NCTD from also pursuing all available remedies against the Contractor and any sureties it may have for said breach or default.
- f. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to NCTD.

24. Suspension for Cause or Convenience

NCTD may, without cause, order the Contractor in writing to suspend, or interrupt performance of the Work in whole or in part for such period of time as NCTD may determine. An adjustment may be made for an increase in the cost of performance of the Agreement including profit on the increased cost of performance, if any, caused by any such suspension or interruption. An equitable adjustment may be made of the price or prices specified in the Agreement relating to the portion of the Work not suspended or interrupted by the notice of suspension or interruption. No adjustment shall be made to the extent:

- a. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- b. An equitable adjustment is made or denied under another provision of this Agreement.

25. Effect of Suspension, or Interruption for Cause or Convenience

Any suspension or interruption for cause or convenience shall be effected by delivery to the Contractor of a written notice of suspension or interruption specifying the extent to which performance of Work under the Agreement is suspended or interrupted and the date upon which such suspension or interruption becomes effective. After receipt of the notice of suspension or interruption and except as otherwise directed by NCTD, the Contractor shall:

- a. Stop Work under the Agreement on the date and to the extent specified in the notice of suspension or interruption;
- b. Place no further orders or subcontracts for materials, services or facilities except as necessary to complete the portion of the Work under the Agreement that is not suspended or interrupted;
- c. Place no further equipment at the site of the Work except as necessary to complete the portion of the Work under the Agreement that is not suspended or interrupted;

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- d. Terminate all orders or subcontracts to the extent they relate to the performance of Work suspended or interrupted by the notice of suspension or interruption;
- e. Assign to NCTD in the manner, at the times, and to the extent directed NCTD, all the right, title and interest of the Contractor under the orders and subcontract so suspended or interrupted. NCTD shall have the right, in its discretion, to settle or pay any or all claims arising out of the suspension or interruption of such orders and subcontracts;
- f. Settle all outstanding liabilities and all claims arising out of such suspension or interruption of orders and subcontract, with the approval or ratification of the Board to the extent the Board may so require. The Board's approval or ratification shall be final for all purposes of this clause;
- g. Transfer title to NCTD, and deliver in the manner, at the times, and to the extent, if directed by NCTD, the fabricated or unfabricated parts, Work in process, completed Work, NCTD Data, supplies and other materials produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of suspension, or, and the completed or partially completed plans, drawings, information and other property which, if the Agreement had been completed, would have been required to be furnished to NCTD;
- h. Use its best efforts to sell, in the manner, at the times, and to the extent, and at the price or prices that NCTD directs or authorizes, any property of the types previously referred to herein, but the Contractor shall not be required to extend credit to any purchaser and may acquire any such property under the conditions prescribed and at a price or prices approved by NCTD. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the NCTD to the Contractor under this Agreement or shall otherwise be credited to the price or cost of the Work covered by this Agreement or paid in such other manner as NCTD may direct;
- i. Complete performance of such part of the Work as shall not have been suspended or interrupted by the notice of suspension or interruption;
- j. Take such action as may be necessary, or as NCTD may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the Contractor and in which NCTD has or may acquire an interest;
- k. The Contractor shall maintain the Work site and provide such ingress and egress for local resident or tenants or the public as may be necessary during the period of suspended Work or until the Agreement has been declared terminated; and
- l. Maintain all required insurance as if the Agreement had been satisfactorily performed and accepted by NCTD.

After receipt of the notice of suspension, or interruption, the Contractor shall submit to NCTD a certified suspension or interruption claim. Such claim shall be submitted promptly but in no event later than ninety (90) days from the effective date of the notice of suspension or interruption. If the Contractor fails to submit a suspension or interruption claim at any time after such ninety (90) day period, NCTD may determine, on the basis of information available to it, the amount, if any, due to the Contractor. NCTD shall then pay to the Contractor the amount so determined.

After receipt of a certified claim, NCTD and the Contractor may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial suspension or interruption of the Agreement. The amount may include a reasonable allowance for profit on Work performed. In no event shall such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Work not suspended, or interrupted and any claims NCTD may have against the Contractor. Nothing in this section, shall be deemed to limit, restrict or otherwise determine or affect

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the amount or amounts that may be agreed upon to be paid to the Contractor pursuant to this paragraph.

After receipt of a certified claim, if the Contractor and NCTD fail to agree on the amounts to be paid to the Contractor, NCTD shall determine, on the basis of the information available to it the amount, if any, due to the Contractor by reason of the suspension or interruption and shall pay the Contractor the amount that shall be determined as follows:

- a. For all Work specified in the Agreement that is performed before the effective date of the notice of suspension or interruption, the total of:
 - i. The reasonable cost to the Contractor, without profit, for all Agreement Work performed prior to the notice of suspension or interruption, including the Work done to secure the project for termination. In determining the reasonable cost, NCTD may utilize the Agreement unit prices or rates in the Payment Schedule, Agreement lump sum, the percentage of Work completed and/or any other method available to it. For purposes of determining reasonable costs, deductions will be made for the cost of any materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the Work. When in the opinion of NCTD the cost of an item of Work is unreasonably high, the reasonable cost to be allowed will be the estimated reasonable cost of performing such Work in compliance with the requirements of the plans and specifications or Scope of Work and excessive actual cost shall be disallowed.
 - ii. Reasonable cost will include a reasonable allowance for overhead and general administrative overhead not to exceed a total of ten percent (10%) of direct costs of such Work.
 - iii. A reasonable allowance for profit on the cost of the Work performed as determined under subparagraph (a) of this subsection, provided the Contractor established to the satisfaction of NCTD that it would have made a profit had the Agreement been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) of the cost of the Work completed.
 - iv. The reasonable cost to the Contractor of handling material returned to vendors, delivered to NCTD, or otherwise disposed of as directed by NCTD.

In no event shall NCTD be liable for costs incurred by the Contractor or any of its subcontractors after receipt of a notice of suspension, interruption or termination. Such nonrecoverable costs include, but are not limited to, anticipated profits on the Agreement post-suspension, post-interruption or post-termination, employee salaries, administrative expenses, overhead or unabsorbed overhead, the costs of preparing and submitting the proposal, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, pre-judgment interest, or any other expense that is not reasonable.

26. Disputes

Any dispute, controversy, or claim arising out of or related to this Agreement or any claimed breach thereof, shall be resolved in accordance with the provisions of this section.

- a. Notice of Dispute: If any dispute, controversy, or claim arises out of or relating to the Agreement or any claimed breach thereof, the disputing Party shall give the other Party written notice of the dispute, controversy, claim, or claimed breach ("Notice of Dispute"). The Notice of Dispute shall include a brief statement of the Party's claim(s) and the relief demanded.
- b. Right to Resolve or Cure: The other Party shall have ten (10) days after receipt of the Notice of Dispute to agree in writing to resolve or cure the dispute, controversy, or claim.
- c. Failure to Resolve or Cure: If the dispute, controversy, or claim has not been resolved or cured by the Parties within ten (10) days after the disputing Party gives the Notice of Dispute, the Parties

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may agree, that as a precondition to the initiation of litigation, the controversy, claim, or dispute shall first be submitted to mediation. If elected to by the Parties, the resulting mediation shall be non-binding, and intended to provide an opportunity for the Parties to evaluate each other's cases and arrive at a mutually agreeable resolution of the dispute.

- i. The mediation process set forth in this section shall be administered by the American Arbitration Association and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the Parties (hereinafter called "Administrator").
- ii. The costs for all mediation, including the administrative fees and mediator compensation, will be shared equally by all Parties. Fees shall be jointly negotiated by all Parties directly with the Administrator. If all Parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any Party shall be paid by the Party producing such witnesses.
- iii. A single mediator, acceptable to all Parties, shall be used to mediate the dispute. The mediator will be knowledgeable regarding the subject matter of the Agreement, and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the Parties, or at the direction of the mediator.
- iv. At least ten (10) days before the first scheduled mediation session, each Party shall provide the mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, such memoranda may be mutually exchanged by the Parties. At the first session, the Parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. The mediator may require each Party to supplement such information.
- v. Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed to by all Parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as they relate to either party's legal position. There shall be no stenographic, audio, or video record of the mediation.
- vi. Mediation sessions are private. The Parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the Parties and with the consent of the mediator. The Parties may have an attorney present and shall advise the other Parties no less than five (5) working days before the mediation of their intent to have an attorney present, so that the other Party may also have its attorneys present.
- vii. The mediator does not have authority to impose a settlement on the Parties but will attempt to assist the Parties in reaching a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the Parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the Parties, as the mediator shall determine.
- viii. The mediator is authorized to end the mediation whenever, in the mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the Parties.
- ix. Any resultant agreements from mediation shall be documented in writing, as agreed upon during the mediation, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, unless such admission is otherwise agreed in writing by all Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery in subsequent proceedings.

The mediation shall be terminated by the execution of a settlement agreement by the Parties; by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or by a written declaration of a Party or Parties to the effect that the mediation proceedings are terminated.

27. Continuing the Work During Disputes

The Contractor shall continue the Work and adhere to the project schedule during all disputes or disagreements with NCTD over: any Work listed in the Scope of Work, prices, or time/deadlines. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Contractor and NCTD may otherwise agree in writing.

28. Laws and Venue

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. The law of California shall govern the resolution of any issue arising in connection with the Agreement Documents, including but not limited to, all questions concerning the validity of the Agreement Documents; the authorities of the parties to enter herein; and modifications or amendment thereto; and the rights and obligations of the parties hereunder. Contractor warrants that in the performance of this Agreement it shall comply with all applicable Federal, State, and local laws and ordinances and all lawful orders, rules, and regulations thereunder.

29. Conflict of Interest

- a. Contractor represents and warrants that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §§1090 et seq. or Government Code §§87100 et seq. during the performance of services under the Agreement proposed in the IFB. Contractor shall promptly disclose any actual or potential conflict of interest to NCTD as Official Correspondence as soon as Contractor becomes aware of such conflict. Contractor further agrees that it will not knowingly employ any person having such interest in the performance of the Agreement proposed in the IFB. Violation of this provision may result in the Agreement being deemed void and unenforceable.
- b. Depending on the nature of the work performed, Contractor may be required to publicly disclose financial interests under NCTD's Conflict of Interest Code. Contractor agrees to cause any of its affected employees or subcontractor's employees to promptly submit Statements of Economic Interests on the forms provided by NCTD upon request by NCTD.
- c. No person previously in the position of Director, Officer, employee or agent of NCTD may act as an agent or attorney for, or otherwise represent Contractor by making any formal or informal appearance, or any oral or written communication, before NCTD or any officer or employee with NCTD for a period of twelve (12) months after leaving office or employment with NCTD if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or agreement.

30. Standard of Conduct and Ethics

- a. Contractor is required to adhere to NCTD's Standard of Conduct, which can be found in the following link: [GM-0008-Standard-of-Conduct.pdf \(gonctd.com\)](https://gonctd.com/GM-0008-Standard-of-Conduct.pdf).
- b. In accordance with 18 U.S.C. 431, no member of, or delegates to, the Congress of the United States shall be admitted to a share or part of this Agreement, or to any benefit arising therefrom.
- c. No member, officer, or employee of NCTD or of a local public body during their tenure or one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- d. To the Contractor's knowledge, no Board member, officer, or employee of NCTD has any interest, whether contractual, non-contractual, and financial or otherwise in this transaction, if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other party.

- e. During the performance of work under a future Agreement, the Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest that could be construed to have an adverse impact on the dealings with NCTD.
- f. The Contractor shall take reasonable actions to prevent any actions or conditions that could result in a conflict with NCTD's best interests. These obligations shall apply to the activities of the Contractor employees, agents, subcontractors, material suppliers (or their representatives) etc. **The Contractor is responsible for implementing and maintaining an internal compliance program to ensure compliance with Agreement requirements and to monitor business ethics and potential conflicts of interest.**
- g. Contractor employees, agents, subcontractors, material suppliers (or their representatives) should not make or provide to be made any employment, gifts, entertainment, liquor, lodging, travel, food, and tickets to public functions (sports events, theater, etc.), payments, loans, free work, substantially discounted work, or other considerations to NCTD representatives, employees, or their relatives. Similarly, Contractor employees, agents or subcontractors (or their relatives) should not receive any commissions, gifts, entertainment, payment, loans, free work, substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with any work performed under this Agreement.
- h. The Contractor may notify NCTD's Compliance Officer, within forty-eight (48) hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this article.
- i. Upon request by NCTD, the Contractor agrees to provide a certified Management Representation Letter executed by an authorized Contractor representative and in a form agreeable to NCTD stating that they are not aware of any situations violating the business ethics expectations outlined in this Agreement or any similar potential conflict of interest situations.
- j. Contractor shall permit interviews of employees, reviews, and audits of accounting or other records by NCTD representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Contractor employees, agents, representatives, vendors, subcontractors, and other third parties paid by Contractor in their relations with NCTD's current or former employees or employee relatives.
- k. The Contractor warrants and covenants as follows:
 - i. That no person or selling agency has been employed or retained to solicit or secure a contract resulting from this Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach of violation of this warranty NCTD shall have the right to annul the Agreement without liability or in its discretion to deduct from the total price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
 - ii. That no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Contractor or any of its agents, employees or representatives to any official NCTD employee or member of the Board in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determination related to the performance of this work.
- l. The Contractor agrees to include this Section in all agreements with all subcontractors and payees receiving funds in connection with the work of NCTD.

31. Contingent Fees and Gratuities

The Contractor agrees as follows:

- a. The Contractor warrants and covenants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty NCTD shall have the right to terminate this Agreement without liability or in its

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discretion to deduct from the total price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

- b. The Contractor warrants and covenants that no gratuities, in the form of entertainment, gifts, or otherwise have been or will be offered or given by Contractor or any of its agents, employees or representatives to any NCTD employee or member of the Board in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determination related to the performance of this Work.

32. Whistleblower Hotline

NCTD is an organization with strong values of responsibility and integrity and has developed a number of policies and procedures to provide contractors with clear direction and guidance to ensure that NCTD's business is carried out with fairness, efficiency, impartiality and integrity. NCTD is committed to an environment where open, honest communication is the expectation, not the exception. If Contractor believes that a violation of law, regulations, Board policies, NCTD's Standard of Conduct Policy or any deviation from established business practices has occurred, NCTD encourages Contractor to report the suspect violation via the anonymous Whistleblower Hotline managed by third party vendor, Navex Global at www.nctd.ethicspoint.com or by calling 855-877-6048.

33. Maintenance of Records and Right to Audit

Books, documents, papers, accounting records, and other evidence pertaining to the performance of services under this Agreement, and costs incurred shall be maintained by Contractor and any subcontractors and made available at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by NCTD, the State Auditor, or any duly authorized representative of the Federal Government.

NCTD may audit Contractor's records pertaining to the Work and/or the Agreement at any time during the term of the Agreement and for a three-year period thereafter. In the event an audit discloses NCTD has overpaid for any good or services, NCTD shall be entitled to an offset or payment from Contractor within thirty (30) calendar days after NCTD provides evidence of overpayment.

For the purpose of determining compliance with Public Contract Code §10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code §8546.7; Contractor, subcontractors, and NCTD shall maintain and make available for inspection all books, documents, papers, accounting records, emails and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, NCTD, FTA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Contractor and its Certified Public Accountants (CPA) work papers that are pertinent to the Agreement, Contractor's or its subcontractors' performance under and compliance with the Agreement, and Indirect Cost Rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished to NCTD or its designated agent if requested. Subcontracts in excess of \$25,000 shall contain this provision. Contractor shall ensure that all records relevant to this Agreement are stored only at locations or on servers or remote databases (cloud) that are within the legal jurisdiction of the United States.

34. Ownership and Care of Work Product, Data, and Intellectual Property

- a. All deliverables prepared or obtained under the terms of this Agreement shall be delivered to and become the property of NCTD. The term "deliverables" includes, but is not limited to, all original drawings, reports, and other documents, including detailed calculations, digital/electronic databases, source code or other intellectual property, videos, imagery, data

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sets, analyses, maps, and other work products developed for the Project. Deliverables must be provided to NCTD in the format requested by NCTD and include metadata.

- b. NCTD shall have the right to remove Contractor's and subcontractor's logos from all deliverables. Should Contractor provide a slide deck, report or other presentation items or deliverables to NCTD that include logos or other identifying marks, Contractor shall provide the deliverables in editable form to allow NCTD the ability to remove such marks. All deliverables provided to NCTD must be free of photos, data or other items that are subject to copyrights or other ownership interests that would limit NCTD's ability to reuse and disseminate any portion of the deliverable.

35. Ownership of NCTD Provided or Purchased Materials, Equipment, Devices, Etc.

All NCTD provided or purchased materials, equipment, devices, etc. obtained under the Agreement documents shall be considered property of NCTD without restriction or limitation on their use and shall be made available upon request to NCTD at any time.

36. Independent Contractor

Contractor is retained as an independent contractor and is not an employee of NCTD. No employee or agent of Contractor or its subcontractors shall become an employee of NCTD. The Work to be performed shall be in accordance with the Work described in the Scope of Work, subject to such directions and amendments from NCTD as herein provided. Any language in the Scope of Work that may directly or indirectly imply employer responsibility for NCTD is unintended and hereby superseded. Nothing contained herein shall be construed as creating the relationship of employer and employee between NCTD and Contractor or their agents and employees. The Contractor shall perform its services as an independent contractor and in accordance with its own methods, the Agreement Documents, applicable laws and regulations. The Contractor shall have exclusive and complete control over its employees and subcontractors.

37. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than NCTD and the Contractor.

38. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

39. Waiver

The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

40. Assignment

Contractor shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of NCTD, which may be withheld for any reason.

41. Confidentiality

Contractor is prohibited from using any social media to reference any ongoing or completed Work for NCTD without NCTD's express written permission. Social media is defined as a set of Internet tools that aid in the facilitation of interaction between people online, including but not limited to, LinkedIn, Twitter, Facebook, YouTube and Myspace.

Contractor will perform services for NCTD that may require NCTD to disclose confidential, financial, and/or proprietary information ("Confidential Information") to Contractor. Confidential Information is any information of any kind, nature, or description concerning any matters affecting or relating to Contractor's services for NCTD, the business or operations of NCTD, and/or the products, drawings, plans, processes, or other data of NCTD. Accordingly, to protect NCTD's Confidential Information that will be disclosed to Contractor, Contractor agrees as follows:

- a. To hold the Confidential Information received from NCTD in strict confidence and exercise a reasonable degree of care to prevent disclosure to others.
- b. To not disclose or divulge either directly or indirectly the Confidential Information to others unless first authorized to do so in writing by NCTD.
- c. To not reproduce the Confidential Information nor use this information commercially or for any purpose other than the performance of its duties for NCTD.
- d. To, upon the request or upon termination of the relationship with NCTD, deliver to NCTD any drawings, notes, documents, equipment, data, or materials received from NCTD or originating from its activities for NCTD.
- e. To grant NCTD the sole right to determine the treatment of any information that is part of the Work received from Contractor, including the right to keep the same as a trade secret, to use and disclose the same without prior patent applications, to file copyright registrations in its own name or to follow any other procedure as NCTD may deem appropriate.
- f. To grant NCTD the right to take action, up to and including termination of the Agreement for violations of this Agreement.
- g. To accept that any unauthorized access, modification, manipulation, destruction, or disclosure of confidential information is a violation of this Agreement and may be a violation of state and federal laws.

42. Integration

This Agreement represents the entire understanding of NCTD and Contractor as to those matters contained herein and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This includes, but is not limited to language in Contractor's invoices, quotes, or other documents that are not written amendments integrated into this Agreement. Such language shall not be binding on NCTD. All parts of the Agreement Document are intended to be fully correlated so that any Work called for in one part and not mentioned in another, and vice versa, is to be executed the same as if mentioned in all said documents. The individual documents comprising the Agreement are complementary and indicate the prosecution and completion of the Work. The intent of the Agreement is to include all items necessary for the proper execution and completion of the Work. This is an integrated agreement.

43. Warranty of Authority

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Each of the Parties signing this Agreement warrants to the other that it has the full authority of the entity on behalf of which its signature is made.

44. Survivability

The rights, obligations and conditions set forth in the sections of this Agreement concerning indemnification, limitations of liability, representations and warranties, insurance, limitations on use and disclosure, notices, disputes, records retention, ownership of intellectual property, work product or data, as well as any federal agency provisions, and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Agreement, shall survive until the last applicable statute of limitations expires.

45. Execution of Agreement and Counterparts

This Agreement may be executed and delivered electronically via e-mail or facsimile and a scanned or facsimile signature shall be treated as an original. The Parties hereby agree to be bound when using electronic signatures and affirm that all persons executing contractual documents relating to the Agreement have verifiable and exclusive rights to use their electronic signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

THE PARTIES, INTENDING TO BE LEGALLY BOUND, have executed this Agreement as of the last date of the Parties' signature.

NORTH COUNTY TRANSIT DISTRICT

CONTRACTOR NAME

By: _____
Julie D. Wiley, Esq.
Chief of Procurement &
Contract Administration

By: _____
Printed Name
Title

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY

CONTRACTOR NAME

By: _____
Lori A. Winfree
General Counsel

By: _____
Printed Name
Title

Date: _____

Date: _____

NOTE: If this Agreement involves a corporate party, the corporation must be represented by two individuals as follows: (A) one from the corporation's "Operational Group" (Chair of the Board, President, or a Vice-President) and; (B) one from the corporation's "Financial Group" (Secretary, Assistant Secretary, Chief Financial Officer, Treasurer or Assistant Treasurer). See California Corporations Code Section 313.

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FINAL SCOPE OF WORK

[Note: Include project schedule in this attachment and ensure that SOW has been conformed

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PAYMENT SCHEDULE

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FINAL UTILIZATION REPORT

Used to show utilization of DBEs at the conclusion of the Agreement, or if applicable, Task Order. All information on this form must be typed, excluding signatures. Required at closeout whether or not federal money used.

1. Local Agency: NCTD 2. Agreement or Task Order DBE Goal %: _____
 3. Project Description: _____
 4. Project Location: _____
 5. Contractor's Name: _____ 6. Prime is Certified DBE: 7. Total Award Amount: _____
 8. Total Dollar Amount Paid to ALL Subcontractors: _____ 9. Total Number of ALL Subcontractors: _____

10. Description of Work, Service, or Materials Supplied by DBE	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
NCTD to Complete this Section		14. TOTAL DOLLAR AMOUNT OF CLAIMED DBE PARTICIPATION	\$
20. NCTD Agreement Number: _____		15. TOTAL PERCENT OF CLAIMED DBE PARTICIPATION ON AGREEMENT	%
21. Federal-Aid Project Number: _____		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
22. Agreement Execution Date: _____			
NCTD reviewer has confirmed that all DBE certifications are valid and information on this form appears complete and accurate.			
23. NCTD Representative's Signature _____	24. Date _____	16. Preparer's Signature _____	17. Date _____
25. NCTD Representative's Name _____	26. Phone _____	18. Preparer's Name _____	
27. NCTD Representative's Title _____		19. Preparer's Title _____	

INSTRUCTIONS – FINAL UTILIZATION REPORT

CONTRACTOR SECTION

1. Local Agency – NCTD name entered as agency that is funding the Agreement or Task Order.
2. Agreement DBE Goal - Enter the Agreement or Task Order DBE goal percentage set by NCTD.
3. Project Description - Enter the project description.
4. Project Location - Enter the project location.
5. Contractor's Name - Enter the Contractor's firm name.
6. Prime Certified DBE - Check box if prime Contractor is a certified DBE.
7. Total Award Amount - Enter the total Agreement or Task Order award dollar amount for the prime Contractor.
8. Total Dollar Amount Paid to ALL Subcontractors – Enter the total dollar amount for all subcontracted Contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime Contractor information in this count.
9. Total number of ALL subcontractors – Enter the total number of all subcontracted Contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime Contractor information in this count.
10. Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime Contractor's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion furnished by the DBE.
11. DBE Certification Number - Enter the DBE's Certification Identification Number. All DBEs must be certified with the CUCP.
12. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted Contractors. Also, enter the prime Contractor's name and phone number, if the prime is a DBE.
13. DBE Dollar Amount - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime Contractor if the prime is a DBE.
14. Total Claimed DBE Participation - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column: Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than the Contract/Task Order DBE Goal, additional documentation is required for the DBELO to determine if penalties apply.
15. Total Claimed DBE Participation - %: Enter the total DBE participation claimed. If the total % claimed is less than the Contract/Task Order DBE Goal, additional documentation is required for the DBELO to determine if penalties apply.
16. Preparer's Signature - The person completing the DBE Final Utilization Report on behalf of the Contractor's firm must sign their name.
17. Date - Enter the date the DBE form is signed by the Contractor's preparer.
18. Preparer's Name - Enter the name of the person preparing and signing the form.
19. Preparer's Title - Enter the position/title of the person signing the Contractor's Final Utilization Report.

NCTD SECTION

20. NCTD Agreement Number - Enter the NCTD Agreement and/or Task Order number.
21. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
22. Agreement Execution Date - Enter the date the Agreement was executed.
23. NCTD Representative's Signature - The person completing this section of the form for NCTD.
24. Date - Enter the date the DBE the form is signed by the NCTD Representative.
25. NCTD Representative's Name - Enter the name of the NCTD Representative reviewing the form.
26. Phone - Enter the area code and phone number of the person signing the form.
27. NCTD Representative Title - Enter the position/title of the NCTD Representative reviewing the Final Utilization Report.