

Revised Agenda Item No. 27

Board of Directors Meeting

December 4, 2013
10:30 a.m.

Location:

San Bernardino Associated Government
Santa Fe Depot – SANBAG Lobby 1st Floor
1170 W. 3rd Street
San Bernardino, CA

DISCUSSION CALENDAR

Project Delivery

27. Award Construction Contract No. C13149 for Lenwood Road Grade Separation Project

That the Board acting in its capacity as the San Bernardino County Transportation Authority:

1. Award Construction Contract No. C13149 to Skanska USA Civil West California District Inc. as the lowest responsive and responsible bidder for the Lenwood Road Grade Separation Project for \$15,210,594.00.
2. Approve Allowances/Contingency for Contract No. C13149 on the Lenwood Road Grade Separation Project in the amount of \$1,830,859.40.

This agenda item is being revised to include the award of Construction Contract No. C13149 to Skanska USA Civil West California District Inc. as the lowest responsive and responsible bidder for the Lenwood Road Grade Separation Project. This information was not available at the time the agenda packet was mailed.



- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

Minute Action

REVISED AGENDA ITEM: 27

Date: December 4, 2013

Subject: Award Construction Contract No. C13149 for Lenwood Road Grade Separation Project

Recommendation: That the Board acting in its capacity as the San Bernardino County Transportation Authority:

1. Award Construction Contract No. C13149 to Skanska USA Civil West California District Inc. as the lowest responsive and responsible bidder for the Lenwood Road Grade Separation Project for \$15,210,594.00.
2. Approve Allowances/Contingency for Contract No. C13149 on the Lenwood Road Grade Separation Project in the amount of \$1,830,859.40.

Background: This item provides for award of a new construction contract based on the competitive low bid process. In April 2013, the Board of Directors authorized release of Invitation for Bid No. C13149 and authorized staff to proceed directly to the Board with a recommendation for award of a construction contract for the Lenwood Road Grade Separation Project ("Project"). The engineer's construction cost estimate was \$19 million. With supplemental items, agency furnished items, and contingency, the total project was estimated at \$21.3 million.

Approved
 Board of Directors

Date: _____

Moved: Second:

In Favor: Opposed: Abstained:

Witnessed: _____

COG	CTC	CTA	X	SAFE	CMA
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Check all that apply.

BRD1312b-mb

Attachment: C13149 <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C13149%20-%20Lenwood%20GS.docx>
<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/CSS%20C13149.docx> <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/DCSS%20C13149.xlsx>

Recommendation 1 & 2:

On November 13, 2013, San Bernardino Associated Governments (SANBAG) received eight (8) bids from contractors whose bid form amounts on their face ranged from a low of \$15,210,594.00 to a high of \$17,677,594.10. At the bid opening, Skanska USA Civil West California District Inc. ("Skanska") was identified as the apparent low bid at \$15,210,594.00 with Ames Construction Inc. second lowest bid at \$15,867,794.10 and Powell Constructors, Inc. third lowest bid at \$16,506,108.30. A complete listing of bid results is provided in Exhibit A.

All eight bids were reviewed by staff for discrepancies and compliance with the Invitation for Bids requirements. Based on the review, Skanska's bid in the amount of \$15,210,594.00 was found to be the lowest responsive, responsible bid.

This project specified a 13.4% Disadvantaged Business Enterprise (DBE) goal. Per bid requirements, the three apparent lowest bidders are to provide within four business days after bid opening documentation to support their DBE outreach efforts and bid day commitment.

On November 19, 2013, Staff received the required DBE Good Faith Efforts documentation from all three apparent low bidders. Staff DBE compliance reviewed the information and determined that Skanska provided adequate good faith efforts.

Staff is recommending that Contract No. C13149 for the Project be awarded to Skanska in the amount of **\$15,210,594.00**.

Staff is also recommending approval of Allowances/Contingency for Contract No. C13149 for the Project, consisting of supplemental items and contingency, for a total amount of **\$1,830,859.40** (See Exhibit B). With the addition of Allowances/Contingency the total construction cost is **\$17,041,453.40**.

Financial Impact: Funding for the contract is provided under Task No. 0881 Lenwood Road Grade Separation Project.

Reviewed By: At the April 2013, Board meeting, approval was given to take award of Contract No. C13149 directly to the Board without prior Committee review. SANBAG General Counsel and Contract Administrator have reviewed this item.

Responsible Staff: Garry Cohoe, Director of Project Delivery

Exhibit A

#	Bidder	Bid Amount at Bid Opening	Final Bid Amount
1	Skanska USA Civil West	\$ 15,210,594.00	\$ 15,210,594.00
2	Ames Construction, Inc.	\$ 15,867,794.10	\$ 15,867,794.10
3	Powell Constructors, Inc.	\$ 16,506,108.30	\$ 16,506,108.30
4	Pulice Construction, Inc.	\$ 16,610,733.00	\$ 16,610,733.00
5	Sundt Construction, Inc.	\$ 16,685,138.00	\$ 16,660,338.00
6	Sully Miller Contracting Company	\$ 16,965,000.00	\$ 16,965,000.00
7	Security Paving Company, Inc.	\$ 17,000,000.00	\$ 17,000,000.00
8	Steve P. Rados, Inc.	\$ 17,677,594.10	\$ 18,271,388.10

Exhibit B

Item	Item Description	Amount
SUPPLEMENTAL WORK ALLOWANCES		
1	Right Of Way Delay	\$ 10,000.00
2	Additional Traffic Control	\$ 50,000.00
3	Additional Water Pollution Control Measures	\$ 100,000.00
4	Storm Water Sampling and Analysis	\$ 15,000.00
5	Disposal Yellow Painted Traffic Stripe	\$ 5,000.00
6	Partnering	\$ 35,000.00
7	Payment Adjustments for Price Index Fluctuations	\$ 45,000.00
8	Dispute Resolution Board	\$ 15,000.00
9	ESA Fencing	\$ 18,000.00
10	Federal Trainee	\$ 16,800.00
11	SUBTOTAL (1)	\$ 309,800.00
CONTINGENCY		
12	CONTINGENCIES (10% of Construction Contract)	\$ 1,521,059.40
13	SUBTOTAL (2)	\$ 1,521,059.40
	Total ALLOWANCES AND CONTINGENCY	\$ 1,830,859.40
SUMMARY		
1	CONSTRUCTION CONTRACT C13149	\$ 15,210,594.00
2	SUPPLEMENTAL WORK ITEMS	\$ 309,800.00
3	CONTINGENCY (10%)	\$ 1,521,059.40
	TOTAL	\$ 17,041,453.40



CONTRACT SUMMARY SHEET

Contract No. C 13149 Amendment No. _____

By and Between

San Bernardino County Transportation Authority and Skanska USA Civil West California District Inc

Contract Description Lenwood Road Grade Separation Project

Board of Director's Meeting Date: December 4, 2013	
Overview of BOD Action: Award Construction Contract C13149 and establish construction contingency	
Is this a Sole-Source procurement? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

CONTRACT OVERVIEW			
Original Contract Amount	\$	15,210,594.00	Original Contingency Amount
			\$ 1,830,859.40
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>
			\$
Current Amendment Amount	\$		Contingency Amendment
			\$
TOTAL CONTRACT VALUE	\$	15,210,594.00	TOTAL CONTINGENCY VALUE
			\$ 1,830,859.40
TOTAL BUDGET AUTHORITY (contract value + contingency)			\$ 17,041,453.40

Contract Start Date 12/4/13	Current Contract Expiration Date 12/31/2016	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

FINANCIAL INFORMATION				
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>0881</u> .				
<input type="checkbox"/> A Budget Amendment is required.				
How are we funding current FY? STP, DEMO, TCIF, Measure I North Desert Fund-MLH, City of Barstow and BNSF				
<input checked="" type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State Funds	<input checked="" type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input checked="" type="checkbox"/> Measure I Funds
<i>Provide Brief Overview of the Overall Funding for the duration of the Contract:</i>				
STP (\$7,079,019), DEMO (\$1,317,380), TCIF (7,356,336), Measure I North Desert Fund-MLH (\$111,994), City of Barstow (\$140,963), BNSF (\$1,035,761)				
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable				

CONTRACT MANAGEMENT INFORMATION
Check all applicable boxes:
<input checked="" type="checkbox"/> Retention? If yes, indicate % <u>5</u> .
<input checked="" type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal <u>9</u> %

Mike BARNUM
Project Manager (Print Name)

Garry Cohoe
Task Manager (Print Name)

Andrea Zureick
Dir. of Fund Admin. & Programming (Print Name)

Jeffery H. H.
Contract Administrator (Print Name)

W STWARDS
Chief Financial Officer (Print Name)

[Signature] 11/27/13
Signature Date

CONTRACT C13149 AND BETWEEN

SANBAG

AND

SKANSKA USA CIVIL WEST CALIFORNIA DISTRICT INC.

FOR

LENWOOD ROAD GRADE SEPARATION PROJECT

This contract, (referred to as “Contract”), is effective on the Effective Date as defined herein, by and between San Bernardino Associated Governments, acting in its capacity as San Bernardino County Transportation Authority (“SANBAG”), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and, **Skanska USA Civil West California District Inc.** (referred to hereafter as “CONTRACTOR”) whose address is; 1995 Agua Mansa Road, Riverside, California 92509. SANBAG and CONTRACTOR are each a “Party” and collectively the “Parties” herein.

RECITALS:

WHEREAS, SANBAG has determined that it requires construction of Lenwood Road Grade Separation Project; and

WHEREAS, the work described herein cannot be performed by the employees of SANBAG; and

WHEREAS, CONTRACTOR has certified that they have the requisite personnel, experience, materials, and equipment and is fully capable and qualified to perform these services identified herein; and

WHEREAS, CONTRACTOR desires to perform all work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth in this contract.

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE 1. CONTRACT DOCUMENTS

The complete Contract includes all of the following Contract Documents: the Contract terms and conditions; bid dated November 13, 2013; California Department of Transportation Standard Plans, dated 2010, the Standard Specifications dated 2010, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished; Project Plans entitled “City of Barstow and County of San Bernardino Department of Public Works Plans for Construction on Lenwood Road” dated 3/5/2013; Addenda No. 1 and 2; and Special Provisions entitled “For Construction of Lenwood Road Grade Separation” dated March 2013; and Performance and Payment Bonds

ARTICLE 2. BONDS

CONTRACTOR will furnish a Payment bond, in the form provided by SANBAG in the IFB, in an amount equal to one hundred percent (100%) of the contract price, and a faithful Performance bond in the form provided by SANBAG in the IFB, in an amount equal to one hundred percent (100%) of the contract price, said bonds, to be secured from a surety company satisfactory to SANBAG within ten (10) working days of the Notice of Award of this Contract and prior to the commencement of work under this Contract. Bonds shall remain in full force and effect for a period of one (1) year following the date of filing of the Notice of Completion. Notwithstanding any other provision set forth in this Contract, performance by a Surety or Guarantor of any obligation of CONTRACTOR shall not relieve CONTRACTOR of any of its obligations thereunder.

ARTICLE 3. RETENTION/PROMPT PAYMENT

Pursuant to CFR 26.29, CONTRACTOR is required to pay all subcontractors for satisfactory performance no later than 7 days from when the CONTRACTOR receives payment from the SANBAG. SANBAG shall hold retainage from CONTRACTOR of five percent (5%) from each invoice, and shall make prompt and regular incremental acceptances of portions, as determined by SANBAG of the contract work and pay retainage to the CONTRACTOR based on these acceptances. The CONTRACTOR or subcontractor(s) shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work. Any delay or postponement of payment may take place only for good cause and with SANBAG's prior written approval. Any violation of these provisions shall subject CONTRACTOR to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the CONTRACTOR or subcontractor in the event of; a dispute involving late payment or nonpayment by the CONTRACTOR; deficient subcontractor performance and/or non-compliance by a subcontractor. This Article applies to DBE and non-DBE contractors.

ARTICLE 4. COMPENSATION

4.1 SANBAG agrees to pay, and CONTRACTOR agrees to accept as full payment for the work outlined in the Contract documents, the sum of **Fifteen Million Two Hundred Ten Thousand Five Hundred Ninety-Four DOLLARS AND Zero CENTS** (\$15,210,594.00), including without limitation any compensation due for unit price work which shall be calculated as the actual number of such units performed multiplied by the unit price subject to additions and deductions, if any, in accordance with said documents. Progress payments shall not be made more often than once each thirty (30) days, nor shall the amount paid be in excess of ninety-five percent (95%) of either the pro rata amount due for completed work as of the progress payment date, or of the full payment amount of the Contract at time of completion. Payment requests shall not be deemed properly completed unless

certified payrolls and any other mandatory submittals have been properly completed and submitted for each week worked during the time period covered by said payment request. Final payment to be made after acceptance of the Project. The Bid Schedule presented on the next page is incorporated into this Contract by this reference.

- 4.2 Pursuant to California Public Contract Code Section 22300, CONTRACTOR has the option to deposit securities with an Escrow Agent acceptable to SANBAG as a substitute for retention earnings required to be withheld. Alternatively, CONTRACTOR may submit a written request to SANBAG, who shall make payments of the retention amount directly to the Escrow Agent. The market value of the securities deposited at the time of substitution shall be at least equal to the cash amount required to be withheld as retention under this Contract. CONTRACTOR shall be responsible for paying all fees incurred by the Escrow Agent in administering the Escrow Account. Securities eligible for investment under this Section shall include those listed in Section 16430 of the Government Code.

ACCEPTED BID SCHEDULE

ITEM NO.	ITEM CODE	ITEM DESCRIPTION	UNIT	QTY	Unit Price	Amount
1	066105	RESIDENT ENGINEERS OFFICE	LS	1	\$ 65,000.00	\$ 65,000.00
2		UTILITY POTHOLING	EA	20	\$ 1,200.00	\$ 24,000.00
3	070030	LEAD COMPLIANCE PLAN	LS	1	\$ 1,500.00	\$ 1,500.00
4	080050	PROGRESS SCHEDULE (CRITICAL PATH METHOD)	LS	1	\$ 3,500.00	\$ 3,500.00
5	090100	TIME RELATED OVERHEAD	WD	370	\$ 2,850.00	\$ 1,054,500.00
6	120090	CONSTRUCTION AREA SIGNS	LS	1	\$ 45,000.00	\$ 45,000.00
7	120100	TRAFFIC CONTROL SYSTEM	LS	1	\$ 60,000.00	\$ 60,000.00
8	120120	TYPE III BARRICADE	EA	3	\$ 200.00	\$ 600.00
9	120149	TEMPORARY PAVEMENT MARKING (PAINT)	SF	336	\$ 2.25	\$ 756.00
10	120159	TEMPORARY TRAFFIC STRIPE (PAINT)	LF	33,455	\$ 0.55	\$ 18,400.25
11	128650	PORTABLE CHANGEABLE MESSAGE SIGN	EA	5	\$ 6,500.00	\$ 32,500.00
12	129000	TEMPORARY RAILING (TYPE K)	LF	3,857	\$ 12.00	\$ 46,284.00
13	130100	JOB SITE MANAGEMENT	LS	1	\$ 70,000.00	\$ 70,000.00
14	130300	PREPARE STORM WATER POLLUTION PREVENTION PLAN	LS	1	\$ 2,500.00	\$ 2,500.00
15	130310	RAIN EVENT ACTION PLAN	EA	12	\$ 100.00	\$ 1,200.00
16	130320	STORM WATER SAMPLING AND ANALYSIS DAY	EA	8	\$ 100.00	\$ 800.00
17	130330	STORM WATER ANNUAL REPORT	EA	3	\$ 250.00	\$ 750.00
18	130530	TEMPROARY HYDAULIC MULCH (BONDED FIBER MATRIX)	AC	8	\$ 3,800.00	\$ 30,400.00
19	130640	TEMPORARY FIBER ROLL	LF	11900	\$ 3.00	\$ 35,700.00
20	130650	TEMPORARY GRAVEL BAG BERM	LF	10300	\$ 8.00	\$ 82,400.00
21	130680	TEMPORARY SILT FENCE	LF	260	\$ 4.00	\$ 1,040.00
22	130710	TEMPORARY CONSTRUCTION ENTRANCE	EA	10	\$ 2,000.00	\$ 20,000.00
23	130730	STREET SWEEPING	LS	1	\$ 132,000.00	\$ 132,000.00
24	130900	TEMPORARY CONCRETE WASHOUT	LS	1	\$ 9,000.00	\$ 9,000.00
25	150605	REMOVE FENCE	LF	7,230	\$ 5.00	\$ 36,150.00

ITEM NO.	ITEM CODE	ITEM DESCRIPTION	UNIT	QTY	Unit Price	Amount
26	150620	REMOVE GATE	EA	1	\$ 1,000.00	\$ 1,000.00
27	150710	REMOVE TRAFFIC STRIPE	LF	3100	\$ 0.50	\$ 1,550.00
28	150711	REMOVE PAINTED TRAFFIC STRIPE	LF	2,500	\$ 0.50	\$ 1,250.00
29	150712	REMOVE PAINTED PAVEMENT MARKING	SF	240	\$ 3.00	\$ 720.00
30	150714	REMOVE THERMOPLASTIC TRAFFIC STRIPE	LF	9,500	\$ 0.50	\$ 4,750.00
31	150742	REMOVE ROADSIDE SIGN	EA	52	\$ 100.00	\$ 5,200.00
32	152255	RESET MAILBOX	EA	35	\$ 250.00	\$ 8,750.00
33	152390	RELOCATE ROADSIDE SIGN	EA	9	\$ 300.00	\$ 2,700.00
34	152440	ADJUST MANHOLE TO GRADE	EA	12	\$ 2,000.00	\$ 24,000.00
35	153211	REMOVE CONCRETE SIDEWALK AND DRIVEWAY	SY	114	\$ 10.00	\$ 1,140.00
36	153215	REMOVE CONCRETE (CURB AND GUTTER)	LF	1,883	\$ 7.00	\$ 13,181.00
37	153218	REMOVE CONCRETE SIDEWALK	SF	6,131	\$ 1.00	\$ 6,131.00
38	153246	REMOVE CONCRETE (MISCELLANEOUS)	SF	2,699	\$ 1.00	\$ 2,699.00
39	160101	CLEARING AND GRUBBING	LS	1	\$ 40,000.00	\$ 40,000.00
40	170101	DEVELOP WATER SUPPLY	LS	1	\$ 69,000.00	\$ 69,000.00
41	190101	ROADWAY EXCAVATION	CY	7,400	\$ 14.00	\$ 103,600.00
42		NOT USED				\$ -
43	F 192003	STRUCTURE EXCAVATION (BRIDGE)	CY	1,209	\$ 10.00	\$ 12,090.00
44	F 192037	STRUCTURE EXCAVATION (CIP RETAINING WALL)	CY	270	\$ 25.00	\$ 6,750.00
45	F 193003	STRUCTURE BACKFILL (BRIDGE)	CY	3,107	\$ 11.00	\$ 34,177.00
46	F 193013	STRUCTURE BACKFILL (CIP RETAINING WALL)	CY	360	\$ 22.00	\$ 7,920.00
47	194001	DITCH EXCAVATION	CY	3,000	\$ 11.00	\$ 33,000.00
48	198010	IMPORTED BORROW	CY	184,500	\$ 5.60	\$ 1,033,200.00
49	203016	EROSION CONTROL (TYPE D)	AC	10	\$ 3,700.00	\$ 37,000.00
50	208279	4" PLASTIC PIPE	LF	90	\$ 15.00	\$ 1,350.00
51	220101	FINISHING ROADWAY	LS	1	\$ 30,000.00	\$ 30,000.00

ITEM NO.		ITEM CODE	ITEM DESCRIPTION	UNIT	QTY	Unit Price	Amount
52		260201	CLASS 2 AGGREGATE BASE	CY	10,400	\$ 30.00	\$ 312,000.00
53		390132	HOT MIX ASPHALT (TYPE A)	TON	17,200	\$ 80.00	\$ 1,376,000.00
54		394073	PLACE HOT MIX ASPHALT DIKE (TYPE A)	LF	100	\$ 5.00	\$ 500.00
55		394090	PLACE HOT MIX ASPHALT (MISC AREA)	SY	9	\$ 350.00	\$ 3,150.00
56		401050	JOINTED PLAIN CONCRETE PAVEMENT	CY	1,715	\$ 235.00	\$ 403,025.00
57		477720	MECHANICALLY STABILIZED EMBANKMENT	SF	67,400	\$ 44.00	\$ 2,965,600.00
58		490738	FURNISH PILING (CLASS 140) (ALTERNATIVE X)	LF	10,761	\$ 36.00	\$ 387,396.00
59	F	490739	DRIVE PILE (CLASS 140) (ALTERNATIVE X)	EA	338	\$ 1,100.00	\$ 371,800.00
60	F	500001	PRESTRESSING CAST-IN-PLACE CONCRETE	LS	1	\$ 190,000.00	\$ 190,000.00
61	F	510051	STRUCTURAL CONCRETE (BRIDGE FOOTING)	CY	845	\$ 175.00	\$ 147,875.00
62	F	510053	STRUCTURAL CONCRETE (BRIDGE)	CY	1,159	\$ 510.00	\$ 591,090.00
63	F	510053	STRUCTURAL CONCRETE (BRIDGE) (4.5 KSI)	CY	1,193	\$ 510.00	\$ 608,430.00
64	F	510072	STRUCTURAL CONCRETE, BARRIER SLAB	CY	74	\$ 700.00	\$ 51,800.00
65	F	510086	STRUCTURAL CONCRETE (APPROACH SLAB) (TYPE N(30S))	CY	172	\$ 750.00	\$ 129,000.00
66	F	510090	STRUCTURAL CONCRETE (BOX CULVERT)	CY	78	\$ 800.00	\$ 62,400.00
67	F	510091	STRUCTURAL CONCRETE (CHANNEL)	CY	83	\$ 700.00	\$ 58,100.00
68	F	510408	CLASS I CONCRETE (CIP RETAINING WALL)	CY	135	\$ 600.00	\$ 81,000.00
69		510502	MINOR CONCRETE (MINOR STRUCTURE)	CY	130	\$ 1,250.00	\$ 162,500.00
70	F	519100	JOINT SEAL (MR 2")	LF	176	\$ 120.00	\$ 21,120.00
71	F	520102	BAR REINFORCING STEEL (BRIDGE)	LB	626,508	\$ 0.90	\$ 563,857.20
72	F	520103	BAR REINFORCING STEEL (CIP RETAINING WALL)	LB	27,000	\$ 1.00	\$ 27,000.00
73	F	520107	BAR REINFORCING STEEL (BOX CULVERT)	LB	12,800	\$ 1.00	\$ 12,800.00
74	F	520108	BAR REINFORCING STEEL (CHANNEL)	LB	10,300	\$ 1.00	\$ 10,300.00
75		560249	FURNISH SINGLE SHEET ALUMINUM SIGN (0.080"-UNFRAMED)	SF	18,800	\$ 16.00	\$ 300,800.00
76		566011	ROADSIDE SIGN - ONE POST (METAL)	EA	49	\$ 150.00	\$ 7,350.00
77		568001	INSTALL SIGN (STRAP AND SADDLE BRACKET METHOD)	EA	6	\$ 100.00	\$ 600.00

ITEM NO.	ITEM CODE	ITEM DESCRIPTION	UNIT	QTY	Unit Price	Amount
78	568015	INSTALL SIGN (MAST ARM HANGER METHOD)	EA	4	\$ 500.00	\$ 2,000.00
79	650014	18" REINFORCED CONCRETE PIPE (CLASS V) (D-3000)	LF	384	\$ 70.00	\$ 26,880.00
80	650018	24" REINFORCED CONCRETE PIPE (CLASS V) (D-3000)	LF	488	\$ 80.00	\$ 39,040.00
81	650026	36" REINFORCED CONCRETE PIPE (CLASS V) (D-3000)	LF	450	\$ 105.00	\$ 47,250.00
82	703233	GRATED LINE DRAIN	LF	20	\$ 225.00	\$ 4,500.00
83	705204	18" CONCRETE FLARED END SECTION	EA	2	\$ 1,500.00	\$ 3,000.00
84	705206	24" CONCRETE FLARED END SECTION	EA	1	\$ 1,700.00	\$ 1,700.00
85	705207	36" CONCRETE FLARED END SECTION	EA	1	\$ 2,000.00	\$ 2,000.00
86	721010	ROCK SLOPE PROTECTION (BACKING NO.1, METHOD B)	CY	28	\$ 200.00	\$ 5,600.00
87	721011	ROCK SLOPE PROTECTION (BACKING NO.2, METHOD B)	CY	6	\$ 500.00	\$ 3,000.00
88	721015	ROCK SLOPE PROTECTION (LIGHT, METHOD B)	CY	128	\$ 125.00	\$ 16,000.00
89	729011	ROCK SLOPE PROTECTION FABRIC (CLASS 8)	SY	350	\$ 10.00	\$ 3,500.00
90	730040	MINOR CONCRETE (GUTTER)	LF	50	\$ 120.00	\$ 6,000.00
91	730070	DETECABLE WARNING SURFACE	SF	96	\$ 30.00	\$ 2,880.00
92	731502	MINOR CONCRETE (MISC CONSTRUCTION)	CY	17	\$ 750.00	\$ 12,750.00
93	731504	MINOR CONCRETE (CURB AND GUTTER)	CY	392	\$ 220.00	\$ 86,240.00
94	731511	MINOR CONCRETE (ISLAND PAVING)	CY	16	\$ 300.00	\$ 4,800.00
95	731516	MINOR CONCRETE (DRIVEWAY)	CY	17	\$ 230.00	\$ 3,910.00
96	731521	MINOR CONCRETE (SIDEWALK)	CY	432	\$ 290.00	\$ 125,280.00
97	731623	MINOR CONCRETE (CURB RAMP)	CY	10	\$ 900.00	\$ 9,000.00
98	770001	CONSTRUCT 18-INCH POLYETHELENE FUSED SEWER	LF	329	\$ 110.00	\$ 36,190.00
99	770005	CONSTRUCT 24-INCH VCP SEWER	LF	790	\$ 150.00	\$ 118,500.00
100	770010	CONSTRUCT 24-INCH POLYETHELENE FUSED SEWER	LF	395	\$ 85.00	\$ 33,575.00
101	770101	INSTALL 36-INCH STEEL CASING	LF	395	\$ 250.00	\$ 98,750.00
102	770210	CONSTRUCT MODIFIED 60-INCH MANHOLE STRUCTURE PER SSPC 200-3 AND SPs	EA	7	\$ 6,000.00	\$ 42,000.00
103	770220	MODIFY EXISTING SEWER MANHOLE STRUCTURE	EA	1	\$ 2,500.00	\$ 2,500.00

ITEM NO.	ITEM CODE	ITEM DESCRIPTION	UNIT	QTY	Unit Price	Amount
104	770501	ABANDON EXISTING SEWER PIPING	LF	1,410	\$ 10.00	\$ 14,100.00
105	770510	ABANDON EXISTING SEWER MANHOLE STRUCTURE	EA	3	\$ 3,000.00	\$ 9,000.00
106	800360	CHAIN LINK FENCE (TYPE CL-6)	LF	4,110	\$ 16.00	\$ 65,760.00
107	800360	CHAIN LINK FENCE (TYPE CL-6) (BNSF ROW)	LF	1,176	\$ 18.00	\$ 21,168.00
108	802520	6' CHAIN LINK GATE (TYPE CL-6) (BNSF ROW)	EA	2	\$ 3,800.00	\$ 7,600.00
109	802520	6' CHAIN LINK GATE (TYPE CL-6)	EA	4	\$ 3,700.00	\$ 14,800.00
110	805000	INSTALL PRIVATE ACCESS GATE (JASPER STA.6+50)	EA	1	\$ 6,000.00	\$ 6,000.00
111	810110	SURVEY MONUMENT	EA	2	\$ 2,000.00	\$ 4,000.00
112	832001	METAL BEAM GUARD RAILING	LF	2,260	\$ 30.00	\$ 67,800.00
113	833032	CHAIN LINK RAILING (TYPE 7)	LF	2,700	\$ 55.00	\$ 148,500.00
114	F 833033	CHAIN LINK RAILING (TYPE 7 MODIFIED)	LF	480	\$ 82.00	\$ 39,360.00
115	F 833140	CONCRETE BARRIER (TYPE 26)	LF	641	\$ 150.00	\$ 96,150.00
116	839521	CABLE RAILING	LF	240	\$ 30.00	\$ 7,200.00
117	839541	TRANSITION RAILING (TYPE WB)	EA	4	\$ 3,300.00	\$ 13,200.00
118	839559	TERMINAL SYSTEM (TYPE SFT)	EA	4	\$ 1,200.00	\$ 4,800.00
119	839578	END CAP (TYPE A)	EA	4	\$ 800.00	\$ 3,200.00
120	839725	CONCRETE BARRIER (TYPE 736)	LF	202	\$ 110.00	\$ 22,220.00
121	840504	4" THERMOPLASTIC TRAFFIC STRIPE	LF	13,328	\$ 0.60	\$ 7,996.80
122	840506	8" THERMOPLASTIC TRAFFIC STRIPE	LF	3,055	\$ 1.00	\$ 3,055.00
123	840511	4" THERMOPLASTIC TRAFFIC STRIPE (DASHED WHITE)	LF	8,112	\$ 0.55	\$ 4,461.60
124	840519	THERMOPLASTIC CROSSWALK AND PAVEMENT MARKING	SF	937	\$ 5.00	\$ 4,685.00
125	840666	PAINT PAVEMENT MARKING (2-COAT)	SF	354	\$ 3.00	\$ 1,062.00
126	860251	SIGNAL AND LIGHTING (MAIN / LENWOOD)	LS	1	\$ 226,999.15	\$ 226,999.15
127	860402	LIGHTING (CITY / BRIDGE)	LS	1	\$ 130,000	\$ 130,000.00
128	999990	MOBILIZATION (10.0%)	LS	1	\$ 1,450,000	\$ 1,450,000.00
TOTAL BID ITEMS						\$ 15,210,594.00

F= Final Pay Item

ARTICLE 5. TAXES, DUTIES AND FEES

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

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SANBAG for the continuance of work performed by the CONTRACTOR, work directly or indirectly involved may be suspended or terminated by SANBAG at the end of the period for which funds are available. When SANBAG becomes aware that any portion of work, which will or may be affected by a shortage of funds, it will promptly notify CONTRACTOR. Nothing herein shall relieve SANBAG from its obligation to compensate CONTRACTOR for work already performed pursuant to this Contract. No penalty shall accrue to SANBAG in the event this provision is exercised.

ARTICLE 7. PERMITS AND LICENSES

CONTRACTOR agrees that he/she is currently the holder of a valid license as a CONTRACTOR in the State of California and that the license is the correct class of license for the work described in the project plans and specifications. CONTRACTOR further agrees to maintain license through the entire duration of Contract without additional compensation from SANBAG. CONTRACTOR also agrees to keep current, and comply with, all permits required throughout the duration of the Project, including without limitation permits or right of entry agreements issued by SANBAG or any railroad operator operating upon railroad tracks affected by or adjacent to the Project. Contractor shall strictly comply with all training and safety requirements, policies and directions of SANBAG and any such affected railroad operator or their designees and all state and federal regulations governing railroad safety or rail facilities.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

CONTRACTOR shall provide SANBAG, the U.S. Department of Transportation (DOT), including but not limited to the Federal Transit or Federal Highway Administration, and the Comptroller General of the United States, or other authorized representatives or agents of SANBAG, access to CONTRACTOR's records which are directly related to this Contract for the purpose of inspection, auditing or copying. CONTRACTOR shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by SANBAG, except in the event of litigation or settlement of claims arising out of this Contract in which case CONTRACTOR agrees to maintain records through the conclusion of all such

litigation, appeals or claims related to this Contract. CONTRACTOR further agrees to maintain separate records for costs of work performed by change order. CONTRACTOR shall allow SANBAG, Caltrans, FHWA or FTA, or its representatives or agents to reproduce any materials as reasonably necessary.

ARTICLE 9. SCHEDULE

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

ARTICLE 10. NONDISCRIMINATION/ EQUAL EMPLOYMENT OPPORTUNITY

10.1 CONTRACTOR agrees to comply with the Equal Employment Opportunity (EEO) regulations for federally assisted programs of the Department of Transportation (DOT), Title 49 CFR Part 21 as they may be amended from time to time, which are herein incorporated by this reference and made part of this Contract. The following minimum specific requirements of the EEO regulations:

10.1.1 CONTRACTOR will work with SANBAG and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the Contract.

10.2.1 CONTRACTOR will accept as his operating policy the following statement:
"It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

10.2 EEO Officer: CONTRACTOR will designate and submit to the SANBAG in writing the EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active CONTRACTOR program of EEO and who must be assigned adequate SANBAG and responsibility to do so.

10.3 Dissemination of Policy: All employees of the CONTRACTOR who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONTRACTOR's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- 10.3.1 Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the CONTRACTOR's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
- 10.3.2 All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the CONTRACTOR's EEO obligations within thirty days following their reporting for duty with the CONTRACTOR.
- 10.3.3 All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the CONTRACTOR's procedures for locating and hiring minority group employees.
- 10.3.4 Notices and posters setting forth the CONTRACTOR's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- 10.3.5 CONTRACTOR's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
- 10.4 Recruitment: When advertising for employees, CONTRACTOR will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- 10.4.1 CONTRACTOR will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, CONTRACTOR will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to CONTRACTOR for employment consideration.
- 10.4.2 In the event CONTRACTOR has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits CONTRACTOR's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the CONTRACTOR to do the same, such implementation violates Executive Order 11246, as amended.)
- 10.4.3 CONTRACTOR will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
- 10.5 Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall

be followed:

- 10.5.1 CONTRACTOR will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - 10.5.2 CONTRACTOR will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - 10.5.3 CONTRACTOR will periodically review-selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONTRACTOR will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - 10.5.4 CONTRACTOR will promptly investigate all complaints of alleged discrimination made to the CONTRACTOR in connection with his obligations under this Contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONTRACTOR will inform every complainant of all of his avenues of appeal.
- 10.6 Training and Promotion: CONTRACTOR will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- 10.6.1 Consistent with CONTRACTOR' work force requirements and as permissible under Federal and State regulations, the CONTRACTOR shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
 - 10.6.2 CONTRACTOR will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - 10.6.3 CONTRACTOR will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
- 10.7 Unions: If CONTRACTOR relies in whole or in part upon unions as a source of employees, CONTRACTOR will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by CONTRACTOR either directly or through a CONTRACTOR's association acting, as agent will include the procedures set forth below:

- 10.7.1 CONTRACTOR will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- 10.7.2 CONTRACTOR will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- 10.7.3 CONTRACTOR is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to CONTRACTOR, CONTRACTOR shall so certify to the SANBAG and shall set forth what efforts have been made to obtain such information.
- 10.7.4 In the event the union is unable to provide CONTRACTOR with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, CONTRACTOR will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which CONTRACTOR has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents CONTRACTOR from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONTRACTOR shall immediately notify the SANBAG.
- 10.8 CONTRACTOR shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall notify all potential subcontractors and suppliers of his/her EEO obligations under this Contract. Disadvantaged business enterprises (DBE), as defined in 49 CFR Part 23 shall have equal opportunity to compete for and perform subcontracts, which the CONTRACTOR enters into pursuant to this contract. CONTRACTOR will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. CONTRACTOR shall obtain lists of DBE construction firms from SANBAG DBE Liaison. CONTRACTOR will use his best efforts to ensure subcontractor compliance with their EEO obligations.
- 10.9 Records and Reports: CONTRACTOR shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three (3) years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SANBAG. The records kept by the CONTRACTOR shall document the following: The number of minority and non-minority group members and women employed in each work classification on the project; the progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; the progress and efforts

being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and the progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

10.9.1 CONTRACTOR will submit an annual report to the SANBAG each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, CONTRACTOR will be required to collect and report training data.

ARTICLE 11. CONFLICT OF INTEREST

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

ARTICLE 12. REPRESENTATIONS

All work supplied by CONTRACTOR under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONTRACTOR agrees that the work performed shall conform to all drawings, plans and specifications herein.

ARTICLE 13. PROPRIETARY RIGHTS/CONFIDENTIALITY

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

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

13.3 Except as reasonably necessary for the performance of Work, CONTRACTOR agrees that it, its employees, agents, and subcontractors will hold in confidence and not divulge to third parties without prior written consent of SANBAG, any information obtained by

CONTRACTOR from or through SANBAG in connection with CONTRACTOR's performance of this Contract, unless (a) the information was known to CONTRACTOR prior to obtaining same from SANBAG pursuant to a prior contract; or (b) the information was obtained at the time of disclosure to CONTRACTOR, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONTRACTOR or its employees, agents, or subcontractors, or (c) the information was obtained by CONTRACTOR from a third party who did not receive the same, directly or indirectly, from SANBAG and who had, to CONTRACTOR's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONTRACTOR for SANBAG in the performance and completion of CONTRACTOR's Services under this Contract, until released in writing by SANBAG, except to the extent such materials and information become a part of public domain information through no fault of CONTRACTOR, or its employees or agents.

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

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

ARTICLE 14. TERMINATION

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

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

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

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

termination.

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

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

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

ARTICLE 15. STOP WORK ORDER

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

ARTICLE 16. CLAIMS

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

ARTICLE 17. INSURANCE

Without in any way affecting the indemnity provision identified in this Contract, CONTRACTOR shall, at the CONTRACTOR's sole expense, and prior to commencement of

any Work, procure and maintain in full force, insurance with carriers and with terms and conditions acceptable to SANBAG through the expiration of the patent deficiency in construction statute of repose set forth in Section 337.1 of the Code of Civil Procedure. The policies shall be written by a carrier authorized to do business in the State of California with a recent Best rating of A-VII or better, and shall be written with at least the following limits of liability:

17.1 Workers' Compensation/Employer's Liability Insurance – Certificate of Insurance must include the following coverages:

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

Waiver of Subrogation endorsement naming SANBAG and its contracting entities as identified in this Article.

17.2 Commercial General Liability – Certificate of Insurance must include the following coverages:

- \$2,000,000 per Occurrence Limit/ \$ 4,000,000 in the aggregate
- \$1,000,000 Personal Advertising Injury Limit/\$2,000,000 in the aggregate
- \$2,000,000 Products/Completed Operations in the aggregate
- \$10,000,000 umbrella or excess liability.
- Combined total for Commercial General Liability and Excess Liability limits of \$25,000,000 will be required for projects with a contract value in excess of \$25,000,000.
- Umbrella or excess policy shall follow form over the CONTRACTOR's General Liability coverage and shall provide a separate aggregate limit for products and completed operations coverage. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

17.3 Commercial Auto Insurance – Certificate of Insurance must include the following coverages:

- Auto Liability limits of not less than \$5,000,000 each accident.
- Combined Bodily Injury and Property Damage Liability insurance
- Coverage must include, but not limited to, owned autos, hired or non-owned autos
- Coverage must include an additional insured endorsement as identified in this Article.
 - a) Products and Completed Operations coverage. CONTRACTOR agrees to maintain this coverage for 10 years following the acceptance of Work or until all applicable Statutes of Limitation expire, whichever length of time is longer. CONTRACTOR further agrees to continue naming SANBAG and any other parties of interest as Additional Insured(s) for the entire length of time as described herein.
 - b) Contractual Liability without any modification of the definition of "Insured Contract".
 - c) Property Damage coverage including completed operations or its equivalent.
 - d) Coverage is to be on an "occurrence" form. "Claims Made" and "Modified

Occurrence” forms are not acceptable except where “Professional Liability” coverage is required.

- e) An endorsement stating that any aggregate limits apply on a “per project” and on a “per location” basis.
- f) The project name must be indicated under “Description of Operations/Locations”.

17.4 Proof of Coverage –

- Evidence of insurance in a form acceptable to SANBAG, including the required “additional insured” endorsements, shall be provided within 10 business days after Notice of Award is given to CONTRACTOR. Prior to commencing any work, CONTRACTOR shall furnish SANBAG with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in this Article.
- If the insurance company elects to cancel or non-renew coverage for any reason, CONTRACTOR will provide SANBAG 30 days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONTRACTOR will provide SANBAG 10 prior days written notice.
- Certificates of Insurance, as evidence of required insurance, for the General Liability and Auto Liability and Umbrella-Excess Liability policies shall set forth deductible amounts applicable to each policy and all exclusions which are added by endorsement to each policy, and shall also include the Contract Number and Project Manager’s name on the face of the certificate.
- SANBAG may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to interests of SANBAG. Regardless of the allowance of exclusions or deductions by SANBAG, CONTRACTOR shall be responsible for any deductible amount and shall warrant that the coverage provided to SANBAG is consistent with the requirements of this section.
- CONTRACTOR shall provide certified copies of all insurance policies required within ten (10) days of SANBAG’s written request of said copies. All such certificates, except those for Worker’s Compensation insurance, shall include San Bernardino Associated Governments and all of its associated entities and capacities, including but not limited to the San Bernardino County Transportation Commission, San Bernardino Congestion Management Agency and Service Authority for Freeway Emergencies, and their officers, employees, agents and volunteers, as additional insureds on Commercial General Liability insurance and auto insurance. With respect to liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR under this Contract. Coverage for such additional insureds shall not extend to liability:
 - (a) Arising from any defective or substandard condition of the Roadway which existed at or prior to the time the CONTRACTOR commenced work, unless such condition has been changed by the work or scope of the work requires the CONTRACTOR to maintain existing Roadway facilities and the claim arises from the CONTRACTOR’ failure to maintain; or
 - (b) For claims occurring after the work is completed and accepted unless these claims are directly related to alleged acts or omissions of the CONTRACTOR which occurred during the course of the work; or

(c) To the extent prohibited by Section 11580.04 of the Insurance Code.

- 17.5 **Builder's Risk Insurance** – CONTRACTOR shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "Special Form Cause of Loss" or equivalent policy form in an amount equal to the not to exceed amount of the Contract, plus the cost of materials supplied or installed by others on a full replacement cost basis. The Builder's Risk policy shall include a soft cost endorsement that covers SANBAG's soft costs equal to twenty percent (20%) of the contracts full value. Soft costs are defined as certain expenses, in addition to labor and materials, required to complete the project that has been delayed due to unexpected physical damage and include, but are not limited to the following; legal/accounting fees, design or other professional fees, financing costs, taxes, general administration, lease expenses, permit fees and insurance premiums. This insurance shall include interests of SANBAG, CONTRACTOR and its sub-contractors in the Project as insureds as their interest may appear. The insurance shall cover without limitation, loss or damage to the work arising from the perils covered under "Special Form Cause of Loss" form coverage including, without duplication of coverage for theft, fire, lightning, explosion, or hail, smoke aircraft or vehicles, riot or civil commotion, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false-work, testing and delay of startup, temporary buildings, property in transit and while stored at a temporary location, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for CONTRACTOR's services and expenses required as a result of such loss. During the Project construction period, SANBAG, CONTRACTOR and its sub-contractors shall mutually waive all rights of recovery for damages caused by fire or other perils covered by the Builders Risk "Special Form Cause of Loss" insurance. All applicable policies of insurance covering the work or the property of the CONTRACTOR or sub-contractor shall be endorsed to provide a waiver of subrogation in favor of SANBAG, CONTRACTOR and sub-contractors-as their interest may appear.
- 17.6 **Waiver of Subrogation Rights** - CONTRACTOR shall require the carriers of Commercial General Liability, Automobile Liability and Worker's Compensation to waive all rights of subrogation against SANBAG, and its officers, employees, agents and volunteers, and subcontractors. Such insurance coverage provided shall not prohibit CONTRACTOR or CONTRACTOR's employees or agents from waiving the right of subrogation prior to a loss or claim. CONTRACTOR hereby waives all rights of subrogation against SANBAG.
- 17.7 **Enforcement** – SANBAG may take any steps as are necessary to assure CONTRACTOR's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of Contract. In the event the CONTRACTOR fails to maintain any insurance coverage required, SANBAG may, but is not required to, maintain this coverage and charge the expense to the CONTRACTOR or terminate this Contract. The required insurance shall be subject to the approval of SANBAG, but any acceptance of insurance certificates by SANBAG shall in no way limit or relieve the CONTRACTOR of the CONTRACTOR's duties and responsibilities under the Contract to indemnify, defend and hold harmless SANBAG, and its authorized officers, employees, agents and volunteers. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the CONTRACTOR for liability in excess of such coverage, nor shall it preclude SANBAG from taking other actions as is available to it under any other provision of the contract or

law. Failure of SANBAG to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

17.8 All coverages for subcontractors shall be subject to all of the requirements stated herein. CONTRACTOR shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor

17.9 If requested by SANBAG, CONTRACTOR shall submit copies of all required insurance policies including endorsements.

17.10 The policy must contain the following endorsement, which must be stated on the certificate of insurance: Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage in form and substance acceptable to SANBAG and any affected Railroad Operator) showing BNSF in the schedule as the alternate employer (or a substitute form providing equivalent coverage. The policy must contain the following endorsements, which must be stated on the certificate of insurance:

Liability Limits/Additional Insureds - The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- (a) Contractual Liability - Railroads ISO form showing “BNSF Railroad Company Property” as the Designated Job Site.
- (b) Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.
- (c) Designated Insured Endorsement ISO form CA 20 48 02 99 (or a substitute form providing equivalent coverage) in favor of SANBAG, their authorized officers, employees, agents, and volunteers.
- (d) Coverage for Certain Operations in Connection with Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing “BNSF Railroad Company Property” as the designated job site.
- (e) Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90) if required by law.
- f) Railroad Protective Liability Insurance – CONTRACTOR shall carry Railroad Protective Liability Insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) naming all of the associated entities and capacities but not limited to SANBAG, the State of California, City of Barstow, County of San Bernardino, and BNSF as a Named Insured covering all operations by or on behalf of CONTRACTOR providing insurance for bodily injury liability, and property damage liability. The limits of liability shall not be less than \$5,000,000 per occurrence and aggregate of \$10,000,000. A binder stating the policy is in place must be submitted to SANBAG and BNSF before the work may be commenced and until the original policy is forwarded to SANBAG.

ARTICLE 19. INDEMNITY

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by SANBAG) and hold harmless all of its associated entities and capacities, including but not limited to SANBAG, State of California, City of Barstow, County of San Bernardino, BNSF, Clayton A. Carmean, Janice J. Carmean, Albert H. Vogler, Rita K. Vogler, and their authorized officers, employees, contractors, agents and volunteers (indemnities) from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by the indemnitees on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. CONTRACTOR's indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. CONTRACTOR's indemnification obligation applies to the indemnitees' "passive" negligence but does not apply to the indemnitees' "sole" or "active" negligence or "willful misconduct" within the meaning of Civil Code Section 2782.

ARTICLE 20. OWNERSHIP OF DOCUMENTS

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

ARTICLE 21. RECORD AND INSPECTION AND AUDITING

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

ARTICLE 22. INDEPENDENT CONTRACTOR

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

ARTICLE 23. ATTORNEY'S FEES

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

ARTICLE 24. GOVERNING LAW AND VENUE

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

ARTICLE 25. FEDERAL, STATE AND LOCAL LAWS

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

ARTICLE 26. PRECEDENCE

26.1 The Contract consists of the General Terms and Conditions, Notice to Bidders and Special Provisions, documents noted in the Notice to Bidders and Special Provisions as "Contract documents", Project plans, Standard Specifications and Plans, SANBAG's Invitation For Bids and Bidders Bid, all of which are incorporated herein by this reference.

26.2 The order of precedence shall apply as noted in the Notice to Bidders and Special Provisions.

ARTICLE 27. COMMUNICATIONS AND NOTICES

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

To CONTRACTOR	To SANBAG
Skanska USA Civil West California District Inc.	San Bernardino Associated Governments
1995 Agua Mansa Road	1170 W. 3 rd Street, 2 nd Floor
Riverside, CA 92509	San Bernardino, CA 92410-1715
Attn: Tim Wilson, Vice President	Attn: Garry Cohoe – Director of Project Delivery
Phone: 951-684-5360	cc: Contract Administrator
Fax: 951-788-2449	Phone: (909) 884-8276

ARTICLE 28. FEDERAL CHANGES

CONTRACTOR shall at all times comply with all applicable Federal Highways Administration regulations, policies, procedures and directives, including without limitation those listed directly or by reference in this Contract, as they may be amended time to time through the term of this Contract. CONTRACTOR’s failure to comply shall constitute a material breach of Contract.

ARTICLE 29. LIQUIDATED DAMAGES

Should CONTRACTOR fail to complete all work within the time specified herein, including any written authorized changes, the actual damages to SANBAG for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, CONTRACTOR shall pay SANBAG the sum of \$7,400.00 per each calendar day of delay as identified in the weekly statement of working days issued by the SANBAG. SANBAG shall not withhold liquidated damages if the delay is determined by SANBAG to be excusable in accordance with the Force Majeure article of this Contract. SANBAG may extend the period of performance of this Contract when in its sole judgment, sufficient justification to do so.

ARTICLE 30. ASSIGNMENT

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

ARTICLE 31. SUBCONTRACTS

31. 1 CONTRACTOR shall perform with its own organization contract work amounting to not less than **30 percent** (or a greater percentage if specified elsewhere in the Contract) of the total original contract price, excluding any specialty items designated by SANBAG. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by CONTRACTOR’ own organization (23 CFR 635).

31.1.1 "Its own organization" shall be construed to include only workers employed and paid directly by the prime CONTRACTOR and equipment owned or rented by the prime CONTRACTOR, with or without operators. Such term does not include

employees or equipment of a subcontractor, assignee, or agent of the prime CONTRACTOR.

31.1.2 "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract. The contract amount upon which the requirements set forth in this Contract is computed includes the cost of material and manufactured products, which are to be purchased or produced by the CONTRACTOR under the contract provisions.

31.2 CONTRACTOR shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the Contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as SANBAG determines is necessary to assure the performance of the Contract.

31.3 No portion of the Contract shall be sublet, assigned or otherwise disposed of except with the prior written consent of SANBAG, or authorized representative, and such consent when given shall not be construed to relieve CONTRACTOR of any responsibility for the fulfillment of the contract. Written consent will be given only after SANBAG has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. CONTRACTOR does not have the right to make any substitutions of any subcontractor listed in its Bid, except in accordance with the State of California Public Contract Code Section 4100 et seq. SANBAG's consent to substitution shall not be deemed to relieve CONTRACTOR of its obligation to fully comply with the requirements of this Contract. CONTRACTOR shall be responsible for all acts and omissions of its employees, subcontractors and their employees. CONTRACTOR is responsible for coordinating all work performed by the subcontractors. SANBAG reserves the right, but not the obligation, to review the subcontractor agreements for this project and to require any modifications so as to conform to the requirements set forth in this Contract.

ARTICLE 32. COORDINATION WITH OTHER CONTRACTS

SANBAG may undertake or award other contracts for work, and CONTRACTOR shall cooperate fully with the other CONTRACTOR's and SANBAG's employees or agents and carefully fit its own work to such additional work as may be directed by SANBAG. CONTRACTOR shall not commit or permit any act, which will interfere with the performance of work by any other CONTRACTOR or by SANBAG.

ARTICLE 33. PREVAILING WAGE REQUIREMENTS

33.1 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.

- 33.2 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.

ARTICLE 34. SAFETY

34.1 In the performance of this Contract, CONTRACTOR shall comply with all applicable federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as SANBAG may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. It is a condition of this Contract, and shall be made a condition of each subcontract, which the CONTRACTOR enters into pursuant to this Contract, that CONTRACTOR and any subcontractor shall not permit any employee, in performance of this Contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

34.2 Pursuant to 29 CFR 1926.3, it is a condition of this Contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

ARTICLE 35. DISADVANTAGED BUSINESS ENTERPRISE

35.1 SANBAG, as a recipient of federal financial assistance, is required to implement a Disadvantaged Business Program in accordance with Federal regulation 49 CFR Part 26 issued by the U.S. Department of Transportation (DOT). SANBAG has set a contract specific goal of 13.4% for this project. CONTRACTOR must furnish all documentation satisfactory to SANBAG that the work committed to DBE's was actually performed by DBE's. Requests for progress payments must include a summary of payments (Form 315) actually made to DBE's during the invoice period, which includes a total of all payments made to **all** subcontractors under this Contract. DBE participation shall be credited toward the overall DBE goal only when payments are actually made to the DBE firms. CONTRACTOR shall submit Form 315 on the 15th of every month to SANBAG's Contract Administrator. Upon completion of the Contract, the CONTRACTOR shall complete Form 317, "Final Report-Utilization of DBE First-Tier Subcontractors" and certify that the information contained in Form 317 is true and correct and submit the form with their final invoice.

- 35.2 Should a substitution of a DBE subcontractor be necessary, CONTRACTOR shall submit a written request to SANBAG prior to any substitution taking place. If a listed DBE subcontractor is terminated, CONTRACTOR shall make Good Faith Efforts to find another certified DBE subcontractor to substitute for the original DBE subcontractor. The substituted DBE must perform at least the same amount of work as the original DBE under the Contract and to the extent needed to meet the DBE goal. The substituted DBE must be certified as a DBE by the CUCP at the time of request is made for the substitution. Substitution requests whether for a DBE or non-DBE subcontractor shall be in accordance with the California Public Contract Code Section 4107 et. seq.
- 35.3 Should a certified DBE subcontractor become decertified during the term of the Contract, the decertified DBE subcontractor the CONTRACTOR shall notify SANBAG in writing within 30 calendar days of the change and include the date of decertification. If a subcontractor becomes a certified DBE during the term of the Contract, the CONTRACTOR shall notify SANBAG in writing within 30 calendar days and include the date of DBE certification.
- 35.4 CONTRACTOR shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by CONTRACTOR to carry out these requirements is material breach of this Contract, which may result in the termination of this Contract or such other remedy, as SANBAG may deem appropriate.

ARTICLE 36. NONSEGREGATED FACILITIES

- 36.1 CONTRACTOR, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. CONTRACTOR agrees that a breach of this certification is a violation of the EEO provisions of this Contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- 36.2 As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time-clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- 36.3 CONTRACTOR agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

ARTICLE 37. RECORD OF MATERIALS, SUPPLIES AND LABOR

CONTRACTOR agrees to become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by CONTRACTOR of Highway Construction Involving Federal Funds," prior to the commencement of work under this Contract. CONTRACTOR shall also maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47. CONTRACTOR shall furnish, upon the completion of the Contract, to SANBAG on Form FHWA-47 together with the data required in this Article relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned. At the CONTRACTOR's option, either a single report covering all contract work or separate reports for the CONTRACTOR and for each subcontract shall be submitted.

ARTICLE 38. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

CONTRACTOR agrees that in order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, CONTRACTOR's suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

ARTICLE 39. GRATUITIES

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

ARTICLE 40. CONFIDENTIALITY

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

ARTICLE 41. CONVICT LABOR

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

ARTICLE 42. INSPECTION OF SITE

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

ARTICLE 43. RECYCLED PRODUCTS

CONTRACTOR shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act as amended, (42 USC 6962), including but not limited to the 40 CFR Part 247 and Executive Order 12873, as applicable. CONTRACTOR agrees to include this Article in all of its subcontracts.

ARTICLE 44. CLEAN WATER REQUIREMENTS

CONTRACTOR shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq. CONTRACTOR shall report each violation to SANBAG and understands and agrees that SANBAG who will in turn, report each violation as required to assure notification to FHWA and appropriate Environmental Protection Agency (EPA) Regional Office. CONTRACTOR shall include this requirement in each subcontract exceeding \$100,000.

ARTICLE 45. DRUG FREE WORKPLACE

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

ARTICLE 46. SEVERABILITY

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

ARTICLE 47. FORCE MAJEURE

CONTRACTOR shall not be in default under this Contract in the event that the Work performed by CONTRACTOR is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, natural disasters such as floods, earthquakes, landslides and fires, or other catastrophic events which are beyond the reasonable control of CONTRACTOR and which CONTRACTOR could not reasonably be expected to have prevented or controlled. "Other catastrophic events" do not include the financial inability of the CONTRACTOR to perform or failure of the CONTRACTOR to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the CONTRACTOR.

ARTICLE 48. INCORPORATION OF RECITALS

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

ARTICLE 49. EFFECTIVE DATE

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

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

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

**SKANSKA USA CIVIL WEST
CALIFORNIA DISTRICT INC.**

SANBAG

By: _____
Jeffrey Langevin
Vice President

By: _____
W.E. Jahn
President, Board of Directors

Date: _____

Date: _____

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

License Number

APPROVED AS TO FORM

Federal Employer
Identification Number

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator