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

Revised Agenda Item No. 29 and Support Material

Board of Directors Meeting

December 4, 2013

10:30 a.m.

Location:

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

DISCUSSION

Transit/Commuter Rail

29. Award Contract No. C14072 for the Demolition, Abatement and Removal of Commercial and Residential Structures

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

1. Award Contract No. C14072 to Interior Demolition as the lowest responsive and responsible bidder in the not-to-exceed amount of \$196,740 for the demolition, abatement and removal of commercial and residential structures located in the City of San Bernardino.
2. Approve Contingency for Contract No. C14072 for a not-to-exceed amount of \$19,674 and authorize the Executive Director, or his designee to release contingency as necessary for completion of the project. **Mitch Alderman**

This Agenda Item is being revised to include the recommendation to award Contract No. C14072 to Interior Demolition as the lowest responsive and responsible bidder for the Demolition, Abatement and Removal of Commercial and Residential Structures.



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

Minute Action

AGENDA ITEM: 29

Date: December 4, 2013

Subject: Award Contract No. C14072 for the Demolition, Abatement and Removal of Commercial and Residential Structures

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

1. Award Contract No. C14072 to Interior Demolition as the lowest responsive and responsible bidder in the not-to-exceed amount of \$196,740 for the demolition, abatement and removal of commercial and residential structures located in the City of San Bernardino.
2. Approve Contingency for Contract No. C14072 for a not-to-exceed amount of \$19,674 and authorize the Executive Director, or his designee to release contingency as necessary for completion of the project.

Background: **This item provides award of a new contract based on the competitive low bid process.** On October 24, 2013, Invitation for Bid (IFB) No. 14072 was released seeking bids on the demolition, abatement and removal of commercial and residential structures located in the City of San Bernardino, in preparation for the construction of the Downtown San Bernardino Passenger Rail Project (DSBPRP). The properties to be demolished include four residential structures at 203, 221, 229 and 261 N. K Street; a commercial structure located at 111 S. I Street; two commercial structures located at 170 and 174 S. E Street;

*

*Approved
 Board of Directors*

Date: _____

Moved: _____ *Second:* _____

In Favor: _____ *Opposed:* _____ *Abstained:* _____

Witnessed: _____

COG	CTC	X	CTA	SAFE	CMA
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Check all that apply.

a storage shed located at 958 Rialto Avenue and duplex located at 961 W. 2nd Street. On October 31, 2013, a Pre-Bid conference was held for potential bidders. A total of ten (10) bids were received on the November 20, 2013, IFB deadline. The following table shows the bidders and the respective amounts.

Bidder	Bid Amount
1. Interior Demolition	\$196,740
2. 5M Construction	\$212,000
3. AD Improvement	\$232,200
4. Wreck Age Demolition	\$241,900
5. Pantano Demolition	\$249,800
6. Midwest Environmental	\$259,439
7. Clauss Construction	\$280,119
8. Superior Demolition	\$290,379
9. Monet Construction	\$361,000
10. Real Estate Consulting Services	\$378,058

Staff has determined that Interior Demolition is the lowest responsive and responsible bidder and is recommending they be awarded Contract No. C14072. The Engineer's Estimate to complete the demolition of these properties is \$318,050.

Staff is also recommending approval of a Contingency for Contract No. C14072 for the Project in the amount of \$19,674. With the addition of Contingency the total construction cost is \$216,414.

At its November 2013 meeting, the Board of Directors authorized staff to proceed directly to the Board without prior policy committee review to ensure the buildings were demolished prior to the commencement of the Downtown San Bernardino Passenger Rail Project construction activities.

Financial Impact: This item is consistent with the SANBAG Fiscal Year 2013/2014 budget. The funding for the construction contract is State Transit Assistance Fund Task No. 0379.

Reviewed By: This item has not received prior committee or technical advisory committee review. SANBAG General Counsel and Contract Administrator have reviewed and approved this item.

Responsible Staff: Mitch Alderman, Director of Rail and Transit Programs

CONTRACT SUMMARY SHEET

Contract No. C 14072 Amendment No. _____

By and Between

San Bernardino Associated Governments and Interior Demolition, Inc.

Contract Description Demolition, Abatement and Removal of Commercial and Residential Structures

Board of Director's Meeting Date: December 4, 2013
Overview of BOD Action: 1.) Award Contract No. C14072 to Interior Demolition, Inc. as the lowest responsive and responsible bidder in the not-to-exceed amount of \$196,740 for the demolition, abatement and removal of commercial and residential structures located in the City of San Bernardino. 2.) Approve Contingency for Contract No. C14072 for a not-to-exceed amount of \$19,674 and authorize the Executive Director, or his designee to release contingency as necessary for completion of the project.

Is this a Sole-Source procurement? Yes No

CONTRACT OVERVIEW					
Original Contract Amount	\$	196,740	Original Contingency Amount	\$	19,764
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	\$	196,740	TOTAL CONTINGENCY VALUE	\$	19,764
TOTAL BUDGET AUTHORITY (contract value + contingency)					\$ 216,504

Contract Start Date 12/4/2013	Current Contract Expiration Date 4/1/2014	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>0379 – Commuter Rail Capital</u> .				
<input type="checkbox"/> A Budget Amendment is required.				
How are we funding current FY? STA Rail 1050.30.0379.53701				
<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State Funds	<input type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input type="checkbox"/> Measure I Funds
Provide Brief Overview of the Overall Funding for the duration of the Contract: STA Rail 1050.30.0379.53701				
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable				

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

Project Manager (Print Name)	Signature	Date
Task Manager (Print Name)	Signature	Date
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Contract Administrator (Print Name)	Signature	Date
Chief Financial Officer (Print Name)	Signature	Date

CONTRACT C14072

BY AND BETWEEN

SANBAG

AND

FOR

Demolition, Abatement and Removal of Commercial & Residential Structures

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 the San Bernardino County Transportation Commission, ("SANBAG"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and, Name of (referred to hereafter as "CONTRACTOR") whose address is; _____.
SANBAG and CONTRACTOR are each a "Party" and collectively the "Parties" herein.

RECITALS:

WHEREAS, SANBAG has determined that it requires the demolition of certain structures, removal and disposal of all lead based paint and asbestos containing materials, landscaping, shrubs, tree(s) removal, and grading of the parcel(s) for drainage, including import and export of fill materials as needed, and the removal of utilities and utility lines servicing structures scheduled for demolition.; 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 Month Day, Year;, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished; Drawings, entitled title of drawings; Addenda No's numbers; Project Plans dated Month Day, Year; and Special Provisions dated Month Day, Year; 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 in full payment for the work outlined in the Contract documents, the sum of \$ enter dollar and cents amount **DOLLARS AND CENTS** (), subject to additions and deductions, if any, in accordance with said documents [including without limit that compensation due for unit price work shall be the actual number of such units performed multiplied by the unit price]. Payment shall not be made more often than once each thirty (30) days, nor shall the amount be paid in excess of ninety-five percent (95%) 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 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.

INSERT ACCEPTED BID

SCHEDULE HERE

AFTER AWARD OF

PROJECT

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.

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 regulations relative to nondiscrimination in 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 requirement activities of the Equal Employment Opportunity (EEO):

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, of 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 anyway 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/ \$10,000,000 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
- \$5,000,000 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 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 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.

17.6 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.

17.7 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

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

ARTICLE 19. INDEMNITY

CONTRACTOR agrees to indemnify, defend (with counsel approved by SANBAG in its sole discretion) and hold harmless SANBAG and its authorized officers, employees, agents and volunteers (indemnitees) from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by the indemnitees on account of any claim except where such indemnification is prohibited by law. 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, Special Provisions, Specifications and Plans. SANBAG's Invitation For Bids and CONSULTANT's bid, all

of which are incorporated herein by this reference.

26.2 The following order of precedence shall apply: First, the Contract, including all attachments. Second, the Invitation for Bids and its addenda and attachments, and third, the Contractor's Bid and its attachments.

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
	San Bernardino Associated Governments
	1170 W. 3rd Street, 2nd Floor
	San Bernardino, CA 92410-1715
Attn:	Attn: Mitch Alderman
	cc: Contract Administrator
Phone:	Phone: (909) 884-8276

ARTICLE 28. FEDERAL CHANGES

CONTRACTOR shall at all times comply with all applicable Federal 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 \$6,000 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 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 the higher of those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, and those contained in the General Prevailing Wage rates determined by the Director of Industrial Relations for similar classifications of labor, 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, rules and regulations 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. INTENTIONALLY OMITTED

ARTICLE 36. NON-SEGREGATED 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. INTENTIONALLY OMITTED

ARTICLE 38. INTENTIONALLY OMITTED

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 on the day and year first written below, but effective as of the day and year first set forth above.

CONTRACTOR

SANBAG

By: _____
Name
Title

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

Date: _____

Date: _____

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

APPROVED AS TO FORM

License Number

By: _____
Eileen Monaghan Teichert
General Counsel

Federal Employer
Identification Number

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

