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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
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## **Revised Support Material Agenda Item No. 14**

### **Board of Directors Meeting**

**December 4, 2013**

**10:30 a.m.**

#### **Location:**

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

### **CONSENT CALENDAR**

#### **Transit/Commuter Rail**

#### **14. On-call Transit and Rail Services Contract No. C14003 and No. C14086**

1. Approve award of Contract No. C14003 to Hatch Mott McDonald for On-Call Transit and Rail Services for an amount as described by Recommendation No. 3.
2. Approve award of Contract No. C14086 to Parsons Brinckerhoff, Inc. for On-Call Transit and Rail Services for an amount as described by Recommendation No. 3.
3. Approve a total not-to-exceed amount of \$20 million for Hatch Mott McDonald (Contract No. C14003) and Parsons Brinckerhoff, Inc. (Contract No. C14086). **Mitch Alderman**

*The Support Material was revised to list the correct listing of Key Personnel in Article 15.*

**CONTRACT C14086**  
**BY AND BETWEEN**  
**SANBAG**  
**AND**  
**PARSONS BRINCKERHOFF, INC.**  
**FOR**  
**ON-CALL TRANSIT AND RAIL SERVICES**

This contract (referred to as “Contract”), is effective on the Effective Date as defined herein, by and between the San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Commission, (“SANBAG”), whose address is 1170 W. 3rd Street, 2<sup>nd</sup> Floor, San Bernardino, California 92410-1715; and Parsons Brinckerhoff, Inc. (“CONSULTANT”) whose address is 451 E. Vanderbilt Way, Suite 200, San Bernardino, CA 92408. SANBAG and CONSULTANT are each a “Party” and collectively the “Parties”.

**RECITALS:**

**WHEREAS**, SANBAG requires certain On-call Transit and Rail Work as described in Exhibit A of this Contract and;

**WHEREAS**, CONSULTANT has confirmed that CONSULTANT has the requisite professional qualifications, personnel, and experience and is fully capable and qualified to perform the services identified herein; and

**WHEREAS**, CONSULTANT desires to perform all Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, the Parties agree as follows:

**ARTICLE 1. PROJECT DESCRIPTION**

CONSULTANT agrees to perform the work and services set forth in Exhibit A, Scope of Work, (“Work”), in accordance with all applicable professional architectural, engineering, construction management, land surveying, and/or materials testing standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined herein. The word “Work”, as used herein, includes without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, and Work imposed upon or assumed by CONSULTANT hereunder; and the Work performed hereunder shall be completed to the satisfaction of SANBAG, with their satisfaction being based on prevailing applicable professional standards.

## **ARTICLE 2. CONTRACT TERM**

The Contract term shall commence upon issuance of a written Notice To Proceed (NTP) issued by SANBAG and shall continue in effect through December 31, 2018 or until otherwise terminated, or unless extended as hereinafter provided by written amendment. Except that all indemnity and defense obligations hereunder shall survive termination of this Contract. CONSULTANT shall not be compensated for any work performed or costs incurred prior to issuance of the NTP.

## **ARTICLE 3. COMPENSATION**

- 3.1 Total compensation to CONSULTANT for full and complete performance of Services, in compliance with all the terms and conditions of this Contract, and any Contract Task Orders (CTOs) issued, payment by CONSULTANT of all obligations incurred in, or application to, CONSULTANT'S performance of Services, and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and services (except as may be explicitly set forth in this Contract as furnished by SANBAG), shall not exceed the amount set forth in 3.2 below.
- 3.2 The total Not-To-Exceed Amount for all CTOs issued to CONSULTANT is Twenty-million Dollars (\$20,000,000), subject to the terms of 3.3 below. All services shall be reimbursed pursuant to the hourly labor rates identified in Exhibit B "Billing Rate Schedule" and the executed CTO. The hourly labor rates identified in Exhibit B, shall remain fixed for the first year of this Contract, and may be escalated to a maximum increase of 5% for each subsequent year only by approval of SANBAG. The hourly rates shall include CONSULTANT's direct labor costs, indirect costs, and profit. All expenses shall be reimbursed for the amount identified in Exhibit B. The SANBAG will not reimburse for any expenses not shown in Exhibit B.
- 3.3 CONSULTANT acknowledges that SANBAG intends to maintain contracts with more than one firm for the types of Work identified in Article 1 above and may add additional firms at any time. As the need for Work arises, SANBAG will issue a request for CTO Proposal's to all firms under contract for such Work. Each qualified firm shall submit a technical response and price proposal based on the agreed upon rates identified in Exhibit B. SANBAG shall review each submittal and award the CTO to the firm that SANBAG determines to be best qualified for that CTO. Award of CTOs is at the sole discretion of SANBAG. SANBAG does not guarantee that it will issue any CTOs for any Work during the term of this Contract. CONSULTANT acknowledges that it may not be awarded any CTOs during the term of this Contract, and that SANBAG will maintain a budget for all of the type of Work identified in Article 1, and the amount available for potential award to CONSULTANT will be reduced by the amounts paid to other firms for CTOs awarded to them.
- 3.4 For personnel subject to prevailing wage rates as described in the California Labor Code, all wage increases that are the direct result of changes in the prevailing wage rates are reimbursable.
- 3.5 The Cost Principles and Procedures set forth in 48 CFR Ch. 1, Sub Ch. E, Part 31, as constituted on the effective date of this Contract shall be utilized to determine allowability of costs under this Contract and may be modified from time to time by written amendment of the Contract.

- 3.5.1 CONSULTANT agrees to comply with Federal Department of Transportation procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- 3.5.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowed under 48 CFR, Ch.1, Subch E, Part 31, Contract Cost Principles and Procedures, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments shall be repaid by CONSULTANT to SANBAG.
- 3.6 Any Work provided by CONSULTANT not specifically covered by the Scope of Work shall not be compensated without prior written authorization from SANBAG. It shall be CONSULTANT's responsibility to recognize and notify SANBAG in writing when services not covered by the Scope of Work have been requested or are required. All changes and/or modifications to the Scope of Work shall be made in accordance with the "CHANGES" provision in this Contract. Any additional services agreed to shall become part of the Work.

#### **ARTICLE 4. INVOICING**

- 4.1 Payment to CONSULTANT as provided herein shall be payable in four (4) week billing period payments, forty-five (45) calendar days after receipt of an acceptable invoice by SANBAG of an invoice prepared in accordance with instructions below. Payment shall not be construed to be an acceptance of the Work.
- 4.2 CONSULTANT shall prepare invoices in a form satisfactory to and approved by SANBAG, and it shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four-week billing period and will be marked with SANBAG's contract number, description, and task order number, if applicable. Invoices shall be submitted within fifteen (15) calendar days after the period covered by the invoice. Invoices shall include request for payment for Work (including additional services authorized by SANBAG) completed by CONSULTANT during each billing period, and shall include back-up information sufficient to establish the validity of the invoice. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT's sole expense. The final invoice shall be marked "FINAL" and will be submitted after any and all closeout documents are submitted to SANBAG. Invoices shall be submitted to SANBAG as follows:

**SANBAG**  
**1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor**  
**San Bernardino, CA 92410-1715**  
**Contract No. C14003**  
**Attention: Accounts Payable**

- 4.3 CONSULTANT shall furnish evidence, satisfactory to SANBAG, that all labor and materials furnished and equipment used during all periods prior to the period covered by

any invoice have been paid in full. SANBAG shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such evidence. Upon furnishing such evidence, satisfactory to SANBAG, SANBAG shall pay CONSULTANT the full amount of the invoice less disputed amounts.

**4.4 Intentionally Omitted**

4.5 CONSULTANT shall include a statement and release with each invoice, satisfactory to SANBAG, that CONSULTANT has fully performed the Work invoiced pursuant to this Contract for the period covered, that all information included with the invoice is true and correct and that all payments to and claims of CONSULTANT and its subcontractors for Work during the period will be satisfied upon the making of such payment. SANBAG shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.

4.6. No payment will be made prior to approval of any Work, nor for any Work performed prior to the NTP, nor for any work under any amendment to the Contract until body or officer having authority to award the Contract on behalf of SANBAG (“Awarding Authority”) takes action.

4.7. CONSULTANT agrees to promptly pay each subcontractor for the satisfactory completion of all Work performed under this Contract, no later than thirty (30) calendar days from the receipt of payment from SANBAG. SANBAG reserves the right to request documentation from CONSULTANT showing payment has been made to its subcontractors. SANBAG also reserves the right, at its own sole discretion, to issue joint checks to CONSULTANT and any subcontractor(s), which shall constitute payment to CONSULTANT in compliance with the terms of this Contract.

4.8 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, Subch. E, Part 31, are subject to repayment by CONSULTANT to SANBAG.

**ARTICLE 5. TAXES, DUTIES AND FEES**

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

**ARTICLE 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 CONSULTANT, 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 CONSULTANT. Nothing herein shall relieve SANBAG from its obligation to compensate CONSULTANT 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**

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

## **ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT**

- 8.1 CONSULTANT shall provide SANBAG, or authorized representatives or agents of SANBAG, including but not limited to Caltrans, Federal Transit Administration (FTA) or Federal Highway Administration (FHWA), access to CONSULTANT's records that are directly related to this Contract for the purpose of inspection, auditing or copying. CONSULTANT shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by SANBAG, except in the event of litigation or settlement of claims arising out of this Contract in which case CONSULTANT agrees to maintain records through the conclusion of all such litigation, appeals or claims related to this Contract. CONSULTANT further agrees to maintain separate records for costs of work performed by amendment. CONSULTANT shall allow SANBAG, Caltrans, FHWA, FTA or any duly authorized agents to reproduce any materials as reasonably necessary.
- 8.2 The cost proposal and/or invoices for this Contract are subject to audit by SANBAG and/or any state or federal agency funding this Project at any time. After CONSULTANT receives any audit recommendations, the cost proposal shall be adjusted by CONSULTANT and approved by SANBAG's Project Manager to conform to the audit recommendations. CONSULTANT agrees that individual items of cost identified in the audit report may be incorporated into the Contract at SANBAG's sole discretion. Refusal by CONSULTANT to incorporate the audit or post award recommendations will be considered a breach of the Contract and cause for termination of the Contract. Any dispute concerning the audit findings of this Contract shall be reviewed by SANBAG's Chief Financial Officer. CONSULTANT may request a review by submitting the request in writing to SANBAG within thirty (30) calendar days after issuance of the audit report.

## **ARTICLE 9. RESPONSIBILITY OF CONSULTANT**

- 9.1 CONSULTANT shall be responsible for the professional quality, technical accuracy, and the assurance of compliance with all applicable federal, state, and local laws and regulations, and other Work furnished by the CONSULTANT under the Contract. The Contract includes reference to the appropriate standard of care for design or other standards for Work performance stipulated in the Contract.
- 9.2 In addition to any other requirements of this Contract or duties and obligations imposed on CONSULTANT by law, CONSULTANT shall, as an integral part of its Work, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality, and safety of the Project and the Work performed by CONSULTANT within the areas of CONSULTANT's expertise. Risks that may be encountered include, but are not limited to, soil conditions, constructability, factors of safety, impact on adjacent properties, public safety, and environmental considerations. At any time during performance of the Scope of Work, should CONSULTANT observe,

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

- 9.3 When a modification to a construction contract is required because of an error or deficiency in the design Work provided under this Contract, CONSULTANT shall be responsible for any and all additional costs associated with the construction contract or the construction of the Project.
- 9.4 SANBAG shall advise CONSULTANT of their responsibility and collect the amount due, including but not limited to, withholding of payments, if the recoverable cost will exceed the administrative cost involved or is otherwise in SANBAG's best interest. SANBAG shall include in the Contract Audit File a written statement of the reasons for the decision to recover or not recover the costs from CONSULTANT.
- 9.5 CONSULTANT shall, document the results of the Work to the satisfaction of SANBAG, and if applicable, Caltrans, FTA, and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of SANBAG's objectives.
- 9.6 As applicable, the responsible professional duly authorized by the State of California shall sign and stamp all plans, specifications, estimates (PS&E) and other applicable data furnished by him/her, certify as-built drawings, and where appropriate, indicate his/her California registration or license number.

## **ARTICLE 10. REPORTING AND DELIVERABLES**

All reports and deliverables shall be submitted in accordance with Attachment A, Scope of Work. At a minimum, CONSULTANT shall submit monthly progress reports with their monthly invoices. The report shall be sufficiently detailed for SANBAG to determine if the CONSULTANT is performing to expectations or is on schedule to provide communication of interim findings, and to sufficiently address any difficulties or problems encountered, so remedies can be developed.

## **ARTICLE 11. TECHNICAL DIRECTION**

- 11.1 Performance of Work under this Contract shall be subject to the technical direction of SANBAG's Department Director of Transit and Rail Programs, ("Director"). SANBAG's Director may identify a designee (hereinafter referred to as "Designee"), in writing to CONSULTANT, with the NTP, and/or subsequently by written notice during the Contract. The term "Technical Direction" is defined to include, without limitation:

- 11.1.1 Directions to CONSULTANT, which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Scope of Work.

- 11.1.2 Provision of written information to CONSULTANT, which assists in the interpretation of drawings, reports, or technical portions of the Scope of Work described herein.
- 11.1.3 Review and, where required by the Contract, approval of technical reports, drawings, specifications, and technical information to be delivered by CONSULTANT to SANBAG under the Contract.
- 11.1.4 Certain administrative modifications to the Contract as defined in the "CHANGES" Article of this Contract.
- 11.2 Technical Direction must be within the Scope of Work under this Contract. SANBAG's Designee does not have the authority to, and may not, issue any Technical Direction which:
  - 11.2.1 Increases or decreases the Scope of Work;
  - 11.2.2 Directs CONSULTANT to perform Work outside the original intent of the Scope of Work;
  - 11.2.3 Constitutes a change as defined in the "Changes" Article of the Contract;
  - 11.2.4 In any manner cause an increase or decrease in the Contract price as identified in Article 3., herein, or the time required for Contract performance;
  - 11.2.5 Changes any of the expressed terms, conditions, or specifications of the Contract; unless identified herein;
  - 11.2.6 Interferes with the CONSULTANT's right to perform the terms and conditions of the Contract; or
  - 11.2.7 Approve any demand or claim for additional payment.
- 11.3 Failure of CONSULTANT and SANBAG's Designee to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken shall be subject to the provisions of the "DISPUTES" Article herein.
- 11.4 All Technical Direction shall be issued in writing by SANBAG's Executive Director or Designee.
- 11.5 CONSULTANT shall proceed promptly with the performance of Technical Direction issued by SANBAG's Executive Director or Designee, in the manner prescribed by this Article and within their authority under the provisions of this Article. If, in the opinion of CONSULTANT, any instruction or direction by SANBAG's Executive Director or Designee falls within one of the categories defined in 11.2.1 through 11.2.7 above, CONSULTANT shall not proceed but shall notify SANBAG in writing within five (5) working days after receipt of any such instruction or direction and shall request SANBAG to modify the Contract accordingly. Upon receiving the notification from the CONSULTANT, SANBAG shall:
  - 11.5.1 Advise CONSULTANT in writing within thirty (30) calendar days after receipt of the CONSULTANT's letter that the Technical Direction is or is not within the

scope of this Contract.

11.5.2 Advise CONSULTANT within a reasonable time whether SANBAG will or will not issue a written amendment.

## **ARTICLE 12. CHANGES**

- 12.1 The Work shall be subject to changes by additions, deletions, or revisions made by SANBAG. CONSULTANT will be advised of any such changes by written notification from SANBAG describing the change. This notification will not be binding on SANBAG until SANBAG's Awarding Authority has approved any amendment to this Contract.
- 12.2 SANBAG's Executive Director or Designee may modify this Contract for certain administrative modifications without issuing a written amendment. Administrative modifications as defined herein are limited to: substitutions of personnel identified in this Contract, including Key Personnel and subcontractors; modifications to hourly rates, classifications, and names of personnel in Attachment B; and modifications of the address of the CONSULTANT. All administrative modifications shall be documented in writing between the Parties.
- 12.3 Promptly after such written notification of change is given to CONSULTANT by SANBAG, the Parties will attempt to negotiate a mutually agreeable adjustment to compensation or time of performance, and amend the Contract accordingly.

## **ARTICLE 13. EQUAL EMPLOYMENT OPPORTUNITY**

During the term of this Contract, CONSULTANT shall not willfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, gender, marital status, sexual orientation, age, political affiliation or disability. CONSULTANT agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practice Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

## **ARTICLE 14. CONFLICT OF INTEREST**

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

## **ARTICLE 15. KEY PERSONNEL**

The personnel specified below are considered to be essential to the Work being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Work that are the responsibility of key personnel to other personnel, CONSULTANT shall notify SANBAG in writing in advance and shall submit justifications

(including proposed substitutions, resumes and payroll information to support any changes to the labor rate) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of key personnel shall not be made without prior written consent of SANBAG's Executive Director or Designee. CONSULTANT shall not substitute any key personnel without the prior written consent of SANBAG's Executive Director or Designee. In the event that the Parties cannot agree as to the substitution of key personnel, SANBAG may terminate the Contract. Key Personnel are:

Name	Function
Doug Sawyer (PB)	Contract Principal
Rich Walker (PB)	Contract Manager/Program Management Lead
Tom Lichterman (PB)	Planning Lead
Rex Plummer (PB)	Engineering Lead
Norm Petersen (PB)	Construction Management Lead
Debra Meier (PB)	Land-Use/Environmental Specialist

**ARTICLE 16. REPRESENTATIONS**

All Work supplied by CONSULTANT under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced, and competent in their respective trades or professions. CONSULTANT agrees that they are supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with SANBAG that the same shall conform to professional and engineering and environmental principles and standards that are generally accepted in the profession in the State of California.

**ARTICLE 17. PROPRIETARY RIGHTS/CONFIDENTIALITY**

- 17.1 If, as part of this Contract, CONSULTANT is required to produce materials, documents data, or information ("Products"), then CONSULTANT, if requested by SANBAG, shall deliver to SANBAG the original of all such Products which shall become the sole property of SANBAG.
- 17.2 All materials, documents, data, or information obtained from SANBAG's data files or any SANBAG-owned medium furnished to CONSULTANT 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 CONSULTANT without the express written consent of SANBAG.
- 17.3 Except as reasonably necessary for the performance of the Work, CONSULTANT 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 CONSULTANT from or through SANBAG unless: (a) the information was known to CONSULTANT prior to obtaining same from SANBAG pursuant to a prior contract; or (b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes, part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subcontractors; or (c) the

information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from SANBAG and who had, to CONSULTANT's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONSULTANT, until released in writing by SANBAG, except to the extent such materials and information become subject to disclosure by SANBAG under the California Public Records Act or other law, or otherwise become public information through no fault of CONSULTANT, or its employees or agents.

- 17.4 CONSULTANT shall not use SANBAG's name or photographs in any professional publication, magazine, trade paper, newspaper, seminar, or other medium without first receiving the express written consent of SANBAG.
- 17.5 All press releases or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SANBAG unless otherwise agreed to in writing by the Parties.

## **ARTICLE 18. INTENTIONALLY LEFT BLANK**

## **ARTICLE 19. TERMINATION**

- 19.1 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 CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall promptly discontinue performance of Work and shall preserve Work in progress and completed Work, pending SANBAG's instruction, and shall turn over such Work in accordance with SANBAG's instructions.
- 19.1.1 CONSULTANT shall deliver to SANBAG, all deliverables prepared by CONSULTANT or its subcontractors or furnished to CONSULTANT by SANBAG. Upon such delivery, CONSULTANT may then invoice SANBAG for payment in accordance with the terms herein.
- 19.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from SANBAG as complete and full settlement for such termination a pro rata share of the Contract cost based upon the percentage of all contracted Work satisfactorily executed to the date of termination.
- 19.1.3 CONSULTANT shall be entitled to receive the actual costs incurred by CONSULTANT to return CONSULTANT's tools and equipment, if any, to it or its suppliers' premises, or to turn over Work in progress in accordance with SANBAG's instructions plus the actual cost necessarily incurred in effecting the termination.
- 19.2 Termination for Cause - In the event CONSULTANT shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy shall be filed against CONSULTANT or a receiver shall be appointed on account of its insolvency, or if CONSULTANT shall default in the performance of any

express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SANBAG may, without prejudice to any other rights or remedies SANBAG may have, and in compliance with applicable Bankruptcy Laws, (a) hold in abeyance further payments to CONSULTANT; (b) stop any Work of CONSULTANT or its subcontractors related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by SANBAG, SANBAG may take possession of the products and finished Work by whatever method SANBAG may deem expedient. A waiver by SANBAG of one default of CONSULTANT shall not be considered to be a waiver of any subsequent default of CONSULTANT, of the same or any other provision, nor be deemed to waive, amend, or modify this Contract.

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

19.3 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 CONSULTANT be entitled to any payment for prospective profits or any damages because of such termination.

## **ARTICLE 20. STOP WORK ORDER**

Upon failure of CONSULTANT or its subcontractors to comply with any of the 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 Section 19.2 "TERMINATION FOR CAUSE" above.

## **ARTICLE 21. 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 CONSULTANT for any claim asserted by CONSULTANT after final payment has been made under this Contract.

## **ARTICLE 22. INSURANCE**

Without anyway affecting the indemnity provision identified in this Contract, CONSULTANT shall, at the CONSULTANT's sole expense, and prior to the commencement of any Work, procure and maintain in full force, insurance with carriers and with terms and conditions acceptable to SANBAG through the entire term of this Contract. The policies shall be written by a carrier authorized to do business in the State of California with a recent A.M. Best rating of A-VII or better, and shall be written with at least the following limits of liability:

22.1 Professional Liability – CONSULTANT, at its own cost and expense, must maintain for the period covered by this Contract, Professional Liability Insurance in an amount not less than \$1,000,000, per claim and \$3,000,000 in the aggregate for all claims. Coverage

shall be solely dedicated to claims arising from professional services provided under this Contract. Professional Liability shall be made on a claims made basis. If such policy contains a retroactive date for coverage of prior acts, this date will be prior to the date the CONSULTANT begins to perform Work under this Contract. CONSULTANT shall secure and maintain this insurance and “tail” coverage throughout the term of this Contract and for a minimum of three (3) years after Contract completion.

- 22.2 Worker’s Compensation - Worker’s Compensation insurance shall be provided in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability with \$1,000,000 per occurrence covering all persons providing labor or services on behalf of CONSULTANT and all risks to such persons under this Contract.
- 22.3 Employer’s Liability- Employer’s Liability insurance shall include coverage in the amount of \$1,000,000 for Bodily injury per accident, a policy limit of \$1,000,000 Bodily Injury by Disease and \$1,000,000 Bodily Injury by Disease for each employee.
- 22.4 Commercial General Liability – Commercial General Liability insurance shall include coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, Personal Injury Liability, Broad-Form Property Damage and Independent Contractors Liability, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and \$2,000,000 in the aggregate written on an occurrence form. Also included shall be \$1,000,000 in the aggregate for Personal/Advertising, \$100,000 for Damages to Rented Premises, and \$10,000 for Medical Expenses. For products and completed operations a \$2,000,000 aggregate shall be provided. Commercial General Liability insurance is to be primary and non-contributory with any insurance carried or administered by SANBAG.
- 22.5 Automobile Liability - To include owned, non-owned and hired automobiles, in an amount of not less than \$1,000,000 combined single limit.
- 22.6 Railroad Protective Liability Insurance (RPLI) – Should the CONSULTANT need to perform activities in a railroad right-of-way, SANBAG and/or a railroad operator may require CONSULTANT to provide RPLI. In such a case, the CONSULTANT shall obtain said RPLI in amounts and coverages and from issuers acceptable to SANBAG in its sole discretion. Depending on facts and circumstances, and the terms and conditions of the policy involved, SANBAG may choose to find that the CONSULTANT satisfactorily meets this requirement by obtaining one of the following: a) an acceptable RPLI-specific policy; b) a waiver of any railroad liability exclusion from the CONSULTANT’S existing general liability policy; or c) acceptable general liability insurance without a railroad exclusion.
- 22.7 Proof of Coverage - CONSULTANT shall furnish certificates of insurance to SANBAG evidencing the insurance coverage required above, prior to the issuance of the NTP, or as SANBAG requests. All such certificates, except those for Worker’s Compensation and Professional Liability insurance, shall include San Bernardino County Transportation Authority, 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 Automobile Liability insurance. Prior to commencing any Work, CONSULTANT 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, CONSULTANT will provide SANBAG thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONSULTANT will provide SANBAG ten (10) days prior written notice. CONSULTANT shall maintain insurance for the entire term of the Contract. The certificate(s) of insurance are to include the Contract number and Project Manager's name on the face of the certificate(s) and shall be submitted directly to SANBAG's Contract Administrator.

- 22.8 Additional Insured - All policies, except for Worker's Compensation and Professional Liability policies, shall contain endorsements naming San Bernardino Associated Governments and all of its associated entities and capacities, including the San Bernardino County Transportation Authority, San Bernardino County Transportation Commission, San Bernardino Congestion Management Agency, San Bernardino County Service Authority for Freeway Emergencies and their officers, members, employees, contractors, agents, and volunteers as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. In addition, all policies shall contain endorsements naming the Southern California Regional Railroad Authority and their officers, employee, contractors, agents, and volunteers as additional insured parties with respect to liabilities arising out of the performance of the Work hereunder. In certain cases, additional insured endorsements in favor of other railroad operators may be required for particular Task Orders. The additional insured endorsements shall not limit the scope of coverage for SANBAG to vicarious liability but shall allow coverage for SANBAG to the full extent provided by the policy.
- 22.9 Waiver of Subrogation Rights - CONSULTANT shall require the carriers of Commercial General Liability, Automobile Liability and Worker's Compensation to waive all rights of subrogation against SANBAG, its officers, members, employees, agents, volunteers, and subcontractors. Such insurance coverage provided shall not prohibit CONSULTANT or CONSULTANT's employees or agents from waiving the right of subrogation prior to a loss or claim. CONSULTANT hereby waives all rights of subrogation against SANBAG.
- 22.10 All coverages for subcontractors shall be subject to all of the requirements stated herein. CONSULTANT shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor.
- 22.11 If requested by SANBAG, CONSULTANT shall submit copies of all required insurance policies including endorsements.

## **ARTICLE 23. INDEMNITY**

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

CONSULTANT shall indemnify and defend (with legal counsel reasonably approved by SANBAG) SANBAG and its authorized officers, members, employees, agents and

volunteers, from any and all losses, damages, liability, actions, and/or costs for claims that arise out of, pertain to, or are related to the negligence, recklessness, or willful misconduct of the design professional.

- 23.2 For all other Work, CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SANBAG) and hold harmless SANBAG and its authorized officers, members, employees, agents and volunteers (Indemnities), from any and all claims, actions, losses, damages and/or liability (Claims) arising out of or related to any act or omission of consultant or any of its officers, employees, agents, subcontractors or volunteers and for any costs or expenses incurred by SANBAG on account of any such Claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. CONSULTANT's indemnification obligation applies to SANBAG's "active" as well as "passive" negligence but does not apply to SANBAG's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

#### **ARTICLE 24. ERRORS AND OMISSIONS**

CONSULTANT shall be responsible for the professional quality, technical accuracy, and coordination of all Work required under this Contract. CONSULTANT shall be liable for SANBAG costs resulting from errors or deficiencies, in Work furnished under this Contract, including but not limited to any fines, penalties, damages, and costs associated with a modification to a construction contract required because of an error or deficiency in the Work provided by CONSULTANT under this Contract.

#### **ARTICLE 25. OWNERSHIP OF DOCUMENTS**

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

#### **ARTICLE 26. SUBCONTRACTS**

- 26.1 CONSULTANT shall not subcontract performance of all or any portion of Work under this Contract, except to those subcontractors listed in the CONSULTANT's proposal, without first notifying SANBAG, in writing of the intended subcontracting and obtaining SANBAG's written approval of the subcontracting and the subcontractor. The definition of subcontractor and the requirements for subcontractors hereunder shall include all subcontracts at any tier.
- 26.2 CONSULTANT agrees that any and all subcontractors of CONSULTANT performing Work under this Contract will comply with the terms and conditions of this Contract applicable to the portion of Work performed by them. CONSULTANT shall incorporate all applicable provisions of this Contract into their subcontracts regardless of the tier. If requested by SANBAG, CONSULTANT shall furnish SANBAG a copy of the proposed subcontract for SANBAG's approval of the terms and conditions thereof and shall not execute such subcontract until SANBAG has approved such terms and conditions. SANBAG's approval shall not be unreasonably withheld.
- 26.3 Approval by SANBAG of any Work to be subcontracted and the subcontractor to perform said Work will not relieve CONSULTANT of any responsibility or liability in

regard to the acceptable and complete performance of said Work. Any substitution of subcontractors must be approved in writing by SANBAG. CONSULTANT shall have the sole responsibility for managing of their subcontractors, including resolution of any disputes between CONSULTANT and its subcontractors.

#### **ARTICLE 27. RECORD INSPECTION AND AUDITING**

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

#### **ARTICLE 28. INDEPENDENT CONTRACTOR**

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

#### **ARTICLE 29. ATTORNEY'S FEES**

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

#### **ARTICLE 30. 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 31. FEDERAL, STATE AND LOCAL LAWS**

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

#### **ARTICLE 32. PRECEDENCE**

32.1 The Contract consists of this Contract document, Exhibit A - Scope of Work, and Exhibit B - Price List, SANBAG's Request For Proposal and RFP Addenda, and

CONSULTANT's proposal, all of which are incorporated in this Contract by this reference.

- 32.2 The following order of precedence shall apply: First, the Contract including Attachments A and B; second, SANBAG's Request For Proposal, including all addenda and instructions; and last, CONSULTANT's Proposal. In the event of a conflict between the Contract Articles and the Scope of Work, the Contract will prevail.
- 32.3 In the event of an express conflict between the documents listed in this Article, or between any other documents, which are a part of the Contract, CONSULTANT shall notify SANBAG in writing within three (3) business days of its discovery of the conflict and shall comply with SANBAG's resolution of the conflict.

**ARTICLE 33. COMMUNICATIONS AND NOTICES**

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given and received: (a) upon actual delivery, if delivery is personally made or if made by fax 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. CONSULTANT shall notify SANBAG of any contact information changes within ten (10) business days of the change.

<b>Parsons Brinckerhoff, Inc</b>	<b>To SANBAG</b>
<b>451 E. Vanderbilt Way, Suite 200,</b>	<b>1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor</b>
<b>San Bernardino, CA</b>	<b>San Bernardino, CA 92410-1715</b>
<b>Attn: Rich Walker</b>	<b>Attn: Mitchell A. Alderman, Director of Rail and Transit Programs</b>
	<b>cc: Jeffery Hill, Contract Administrator</b>
<b>Phone:</b>	<b>Phone: (909) 884-8276</b>

**ARTICLE 34. DISPUTES**

34.1 In the event any dispute, other than an audit, arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, Work to be performed, Scope of Work and/or time of performance), the dispute shall be decided by SANBAG's Contract Administrator within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have ten (10) calendar days after receipt of the decision in which to file a written appeal thereto with SANBAG's Executive Director. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such dispute is appealable to a court of competent jurisdiction.

34.2 During resolution of the dispute, CONSULTANT shall proceed with performance of the Contract with due diligence.

**ARTICLE 35. GRATUITIES**

CONSULTANT, its employees, agents, or representatives shall not offer or give to any officer, official, agent or employee of SANBAG, any gift, entertainment, payment, loan, or other gratuity.

**ARTICLE 36. REVIEW AND ACCEPTANCE**

All Work performed by CONSULTANT shall be subject to periodic review and approval by SANBAG at any and all places where such performance may be carried on. Failure of SANBAG to make such review, or to discover defective work, shall not prejudice the rights of SANBAG at the time of final acceptance. All Work performed by CONSULTANT shall be subject to periodic and final review and acceptance by SANBAG upon completion of all Work.

**ARTICLE 37. CONFIDENTIALITY**

Any SANBAG materials to which CONSULTANT or its subcontractors or agents have access or materials prepared by CONSULTANT under the terms of this Contract shall be held in confidence by CONSULTANT, who shall exercise reasonable precautions to prevent the disclosure of confidential information to anyone except as authorized by SANBAG. CONSULTANT shall not release any reports, information or promotional material or allow for the use of any photos related to this Contract for any purpose without prior written approval of SANBAG.

**ARTICLE 38. EVALUATION OF CONSULTANT**

CONSULTANT's performance may be evaluated by SANBAG periodically throughout the Contract performance period, such as at the completion of certain milestones as identified in Exhibit A and/or at the completion of the Contract. A copy of the evaluation will be given to CONSULTANT for their information. The evaluation information shall be retained as part of the Contract file and may be used to evaluate CONSULTANT if they submit a proposal on any future Request for Proposals or Request for Qualifications issued by SANBAG.

**ARTICLE 39. SAFETY**

CONSULTANT shall strictly comply with all OSHA regulations, local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT's operations in the performance of Work under this Contract. CONSULTANT shall comply with safety instructions issued by SANBAG and their representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while on the project construction site.

**ARTICLE 40. DRUG FREE WORKPLACE**

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

**ARTICLE 41. ASSIGNMENT**

CONSULTANT shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of SANBAG. SANBAG's exercise of consent shall be within its sole discretion. Any purported assignment without SANBAG's prior written consent shall be void and of no effect, and shall constitute a material breach of this Contract. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

## **ARTICLE 42. AMENDMENTS**

The Contract may only be changed by a written amendment duly executed by the Parties. Work authorized under an amendment shall not commence until the amendment has been duly executed.

## **ARTICLE 43. PREVAILING WAGES**

CONSULTANT acknowledges that due to differing funding sources for various projects or Task Orders that may be covered by the Scope of Work, prevailing wage requirements or procedures may differ from Task Order to Task Order. CONSULTANT shall comply with all applicable laws and regulations pertaining to prevailing wages and prevailing wage reporting for the type of work to be done under each Task Order. Without limiting the generality of the foregoing, Consultant shall comply with the following:

43.1 By its execution of this Contract, CONSULTANT certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" or "maintenance" projects, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, CONSULTANT agrees to fully comply with such Prevailing Wage Laws. CONSULTANT shall make copies of the prevailing wage rates of per diem for each craft, classification or type of worker needed to execute the Work available to interested parties upon request, and shall post copies at the CONSULTANT's principal place of business and at the project site. CONSULTANT will also adhere to any other applicable requirements, including, but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. CONSULTANT shall defend, indemnify and hold SANBAG, its elected officials, members, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws.

43.2 CONSULTANT shall provide notice of Prevailing Wage Laws by posting a Notice containing the following language at the Project job site(s): The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations (DIR) for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity, which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the local office for the Division of Labor Standards Enforcement (DLSE). Local Office Contact Information: 464 West 4<sup>th</sup> Street, Room 348, San Bernardino, CA 92401, telephone (909) 383-4334. Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws. Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc.) as well as the name of the employer, the public entity that awarded the public works contract, and the location and name of the project. For general information

concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the DIR website found at [www.dir.ca.gov/dlse/PublicWorks.html](http://www.dir.ca.gov/dlse/PublicWorks.html).

43.3 CONSULTANT shall arrange a time for a representative from SANBAG to conduct a Kick-Off Meeting with CONSULTANT and their subcontractors listed in the proposal. The Kick-Off Meeting shall occur before commencement of work on the Project requiring payment of prevailing wages. At the Kick-Off Meeting applicable state labor law requirements shall be discussed and copies of suggested reporting forms furnished. The following state labor law requirements applicable to the Contract are composed of but not limited to the following items, which will be discussed at the Kick Off Meeting.:

- (a) CONSULTANT's duty to pay prevailing wages under Labor Code Section 1770 et seq., should the project exceed the exemption amounts;
- (b) CONSULTANT's duty to employ registered apprentices on the public works project under Labor Code Section 1777.5;
- (c) The penalties for failure to pay prevailing wages (for non-exempt projects) and employ apprentices including forfeitures and debarment under Labor Code Sections 1775 and 1777.7;
- (d) The requirement to keep and submit copies upon request of certified payroll records under Labor Code Section 1776, and penalties for failure to do so under Labor Code Section 1776(g);
- (e) The prohibition against accepting or extracting kickback from employee wages under Labor Code Section 1778;
- (f) The prohibition against accepting fees for registering any person for public work under Labor Code Section 1779; or for filling work orders on public works under Labor Code Section 1780;
- (g) The requirement to list all subcontractors under Public Contract Code Section 4104;
- (h) The requirement to be properly licensed and to require all subcontractors to be properly licensed and the penalty for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractors License Law, found at Business and Professions Code Section 7000 et seq;
- (i) The prohibition against unfair competition under Business and Professions Code Sections 17200-17208;
- (j) The requirement that CONSULTANT be properly insured for Workers Compensation under Labor Code Section 1861;
- (k) The requirement that CONSULTANT abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project;

- (l) The requirement to provide itemized wage statements to employees under Labor Code Section 226.

The Kick Off Meeting Checklist and Certification (Exhibit C) must be signed by CONSULTANT and each subcontractor on the Project subject to prevailing wage laws.

- 43.4 CONSULTANT shall maintain certified payroll records in accordance with Labor Code Section 1776 and furnish the records to a representative from SANBAG on a monthly basis or within 10 days of any separate request by SANBAG. Payroll records shall be furnished in a format prescribed by Title 8 CCR § 16401.
- 43.5 Payroll records timely furnished by CONSULTANT and subcontractors shall be reviewed by SANBAG as promptly as practicable after receipt thereof, but in no event more than 30 calendar days after such receipt. "Review" for this purpose means the inspection of the records furnished to determine whether (1) all appropriate data elements identified in Labor Code Section 1776(a) have been reported; (2) certification forms have been completed and signed in compliance with Labor Code Section 1776(b); and (3) no less than the correct prevailing wage rates have been reported as paid for each classification of labor listed.
- 43.6 On a random basis and at such other times as it deems appropriate, SANBAG may also confirm the accuracy of payroll reports. "Confirmation" for this purpose means the corroboration of information in payroll reports through independent sources, including without limitation worker interviews, examination of any time and pay records found within the definition of "Payroll Records" in section 16000 of Title 8 of the California Code of Regulations, direct verification of "Employer Payments" (as defined at section 16000 of Title 8 of the California Code of Regulations) through third-party recipients of those payments, or any other legal and reasonable method of corroboration. As part of its confirmation process, SANBAG may require CONSULTANT and its subcontractors to furnish for inspection itemized statements prepared in accordance with Labor Code Section 226. SANBAG may conduct random confirmation based on a recognized statistical sampling of the records submitted.
- 43.7 Representatives of SANBAG may conduct in-person inspection(s) at the site or sites at which the contract for public work is being performed ("On-Site Visits"). On-Site Visits may be undertaken randomly or as deemed necessary by SANBAG. On-Site Visits may include visual inspection of required job site notices, including but not limited to (1) the determination(s) of the Director of Industrial Relations of the prevailing wage rate of per diem wages required to be posted at each job site in compliance with Labor Code Section 1773.2; (2) the Notice of pay days and time and place of payment required by Labor Code Section 207; and (3) the form prescribed by section 16451(d) above. On-Site Visits may also include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the project, and any other activities deemed necessary by SANBAG to ensure compliance with prevailing wage requirements. In accordance with Labor Code Section 90, SANBAG shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner, including but not limited to evidence of

compliance with Labor Code Section 226 (itemized wage statements for employees) and any other laws enforced by the Labor Commissioner.

- 43.8 An Audit shall be prepared by SANBAG upon determining that there has been a violation of Division 2, Part 7, Chapter 1 of the Labor Code resulting in the underpayment of wages. An "Audit" for this purpose means as a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under Labor Code Sections 1775 and 1813.
- 43.9 A prescribed routine for withholding penalties, forfeitures, and underpayment of wages for violations of the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code will apply to this Contract. Payments shall not be made to CONSULTANT by SANBAG when payroll records are delinquent or inadequate. The Labor Commissioner may require SANBAG to withhold contract payments when payroll records are delinquent or inadequate. The amount withheld shall be limited to those payments due or estimated to be due to the CONSULTANT or its subcontractors whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the CONSULTANT or its subcontractors whose payroll records are delinquent or inadequate; provided that a CONSULTANT shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the subcontractor has cured the delinquency or deficiency. When contract payments are withheld under this section, the Labor Commissioner shall provide the CONSULTANT and its subcontractors, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies what amounts SANBAG has been directed to withhold; and (3) informs the CONSULTANT or its subcontractors of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Commissioner has exceeded his or her authority under this section. No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced. In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties may be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records.
- 43.10 For more information regarding the Labor Compliance Program requirements that will apply to this Contract or the procedures that will be used by the Division of Labor Standards Enforcement (DLSE) to review and confirm payroll records, conduct in-person site visits for inspection, audits, enforce apprenticeship standards, and handle complaints, investigations and violations CONSULTANT should refer to Chapter 1 of Part 7 of Division 2 of the Labor Code (commencing with Section 1771), Subchapters 4 and 4.5 of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations (commencing with Section 16421) and the DLSE Web site at <http://www.dir.ca.gov/dlse/dlsePublicWorks.html>.

**ARTICLE 43. PREVAILING WAGES**

43.1 Where CONSULTANT is notified by SANBAG that a particular Task Order will be funded in part or in whole with California state bond funds CONSULTANT shall also comply with the following:

(a) The Task Order will be subject to Chapter 1 of Part 7 of Division 2 of the Labor Code (commencing with Section 1771) and Subchapters 4 and 4.5 of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations (commencing with Section 16421) as it will be funded in whole or in part by California state bond funds, or is a design build project with Labor Compliance Program (LCP) requirements pursuant to statute. The CONSULTANT shall comply with these cited sections, including the obligation to furnish certified payroll records directly to the California Labor Commissioner in accordance with Title 8 CCR § 16461. The Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement (DLSE), which is part of the California Department of Industrial Relations (DIR), is responsible for monitoring and enforcement of the prevailing wage laws on that Task Order.

(b) All monitoring, inspection, review auditing and other power, authority, requirements and enforcement functions set forth in 43.1 to 43.10 above with respect to SANBAG shall also apply with respect to the Compliance Monitoring Unit of the DLSE (CMU).

(c) CONSULTANT shall post a Notice containing the following language at all Project job sites:

This public works project is subject to monitoring and investigative activities by the Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all consultants and other persons having access to the job site to enable the CMU to ensure compliance with and enforcement of prevailing wage laws on public works projects. The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations (DIR) for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity, which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the CMU at any office of the Division of Labor Standards Enforcement (DLSE). Local Office Contact Information: 464 West 4<sup>th</sup> Street, Room 348, San Bernardino, CA 92401, telephone (909) 383-4334. Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the project that the CMU may take legal action against those responsible. Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc.) as well as the name of the employer, the public entity that awarded the public works contract, and the location and name of the project. For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the DIR website found at [www.dir.ca.gov/dlse/PublicWorks.html](http://www.dir.ca.gov/dlse/PublicWorks.html).

(d) the CMU may require a Kick-Off meeting with CONSULTANT staff and all subcontractors listed in the proposal or who are required to be identified or prequalified on a design-build project. The Kick-Off Meeting shall occur before commencement of work on the Project requiring payment of prevailing wages. At the Kick-Off Meeting applicable state labor law requirements shall be discussed, and copies of suggested reporting forms furnished. The same state labor law requirements set forth in 43.3 above shall be applicable to the Task Order and will be discussed at the Kick Off Meeting. The CMU may require a new Kick-Off Meeting Checklist and Certification (Exhibit C) be signed by CONSULTANT and each subcontractor on the Project subject to prevailing wage laws.

(e) Payroll records shall be furnished in a format prescribed by Title 8 CCR § 16401. The DLSE utilizes a third party vendor to provide the electronic certified payroll service – “My LCM”. The service must be used by the Parties for the Project. A link is established for electronic certified payroll at <https://app.mylcm.com>. The site includes step-by-step instructions on how to manage employee profiles and submit payroll reports. My LCM training and on-going support are provided at no charge to prime CONSULTANT’s and participating subcontractor. CONSULTANT shall be responsible for all subcontractors working on the Project and will have the responsibility to ensure

that it and its subcontractor are registered and trained as required to utilize the electronic payroll service. Employee information is entered once into My LCM and then remains in the system and is accessible to CONSULTANT. My LCM eliminates the need for CONSULTANT to submit paper prevailing wage documents and forms while providing an online database of all certified payroll reports. All contract-specific wage rates and classifications are available within My LCM.

#### **ARTICLE 44. CONTINGENT FEE**

CONSULTANT warrants, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, SANBAG has the right to terminate the Contract without liability, pay only for the value of the Work actually performed, or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE 45. SEISMIC SAFETY REQUIREMENTS**

CONSULTANT agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. CONSULTANT also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. CONSULTANT also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **ARTICLE 46. ENERGY CONSERVATION**

CONSULTANT agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. CONSULTANT agrees to 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. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONSULTANT also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **ARTICLE 47. FEDERAL CHANGES**

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

#### **ARTICLE 48. CLEAN AIR**

CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* CONSULTANT agrees to report each violation to SANBAG and understands and agrees that SANBAG will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONSULTANT also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **ARTICLE 49. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

SANBAG and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to SANBAG, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **ARTICLE 50. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.**

CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, CONSULTANT further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONSULTANT to the extent the Federal Government deems appropriate. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

#### **ARTICLE 51. SUSPENSION AND DEBARMENT**

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, CONSULTANT is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. CONSULTANT is required to comply with 49 CFR 29, Subpart C

and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

“The certification in this clause is a material representation of fact relied upon by SANBAG. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SANBAG, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

## **ARTICLE 52. CIVIL RIGHTS**

52.1 Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, CONSULTANT agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, CONSULTANT agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

52.2 Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. CONSULTANT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, CONSULTANT agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONSULTANT agrees to comply with any

implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, CONSULTANT agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

52.3 CONSULTANT also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### **ARTICLE 53. INCORPORATION OF FTA TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any SANBAG requests, which would cause SANBAG to be in violation of the FTA terms and conditions. The CONSULTANT agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **ARTICLE 54. CHANGES TO FEDERAL REQUIREMENTS**

CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between SANBAG and FTA, as they may be amended or Best Practices Procurement Manual – Appendix A.1 Page 17 promulgated from time to time during the term of this contract. CONSULTANT's failure to so comply shall constitute a material breach of this contract.

### **ARTICLE 55. FORCE MAJEURE**

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

**ARTICLE 56. WARRANTY**

CONSULTANT warrants that all Work performed shall be in accordance with the Contract, and all applicable professional standards. In the event of a breach of this provision, CONSULTANT shall take the necessary actions to correct the breach at CONSULTANT’s sole expense. If CONSULTANT does not take the necessary action to correct the breach, SANBAG, without waiving any other rights or remedies it may have, may take the necessary steps to correct the breach, and CONSULTANT shall promptly reimburse SANBAG for all expenses and costs incurred.

**ARTICLE 57. ENTIRE DOCUMENT**

47.1 This Contract and its attachments constitute the sole and only agreement governing the Work and supersedes any prior understandings, written or oral, between the Parties respecting the Project. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been expressly incorporated into this Contract.

47.2 No agent, official, employee, or representative of SANBAG has any authority to bind SANBAG to any affirmation, representation, or warranty outside of, or in conflict with, the stated terms of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.

47.3 Both Parties have been represented or had the full opportunity to be represented by legal counsel of their own choosing in the negotiation and preparation of this Contract. Therefore, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

**ARTICLE 58. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT**

CONSULTANT shall comply with all applicable provisions of the Americans With Disabilities Act in performing Work under this Contract.

**ARTICLE 59. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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

**ARTICLE 60. EFFECTIVE DATE**

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

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

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

**PARSONS BRINCKERHOFF, INC**

**SANBAG**

By: \_\_\_\_\_  
Douglas B. Sawyer  
Sr. Vice President, Area  
Manager

By: \_\_\_\_\_  
W.E. Jahn  
President, Board of Directors

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Eileen Monaghan Teichert  
General Counsel

**CONCURRENCE**

By: \_\_\_\_\_  
Jeffery Hill  
Contract Administrator

**Exhibit “A”**  
**Scope of Work**  
**Contract No. C14086**  
**On-call Transit and Rail Services**

**GENERAL**

The services to be provided by the Consultant for this Request for Proposal (RFP) may include all work necessary from conceptual through implementation of railroad and non-railroad transit projects and other transit corridor planning projects. The Consultant will provide a variety of services that in general include but not limited to, rail and transit systems, multi-modal and transit centers, rail and transit maintenance facilities, support facilities, and non-motorized systems; program, project, and construction management; staff augmentation; planning, environmental, design as well as construction support; development/entitlement projects and evaluations; studies, analyses, and other general services.

The Authority may require any of the following services to be completed by the Consultant(s); however, since the frequency, quantity, and dollar value of each service listed below is uncertain, the services have been divided into two groups. Tier 1 services are those that will most likely be needed during the term of the contract and Tier 2 are those that may be needed at a later date. The proposer shall submit all necessary documentation required in this SOQ to support their respective qualifications that meet the needs of the Tier 1 services. These at a minimum should include staff resumes and related project experience that link staff to the projects. For Tier 2, the proposer shall demonstrate their ability to add the necessary firms and personnel at a later date for the required services. The Consultant does not need to identify firm, personnel, and related project experience at this time for the Tier 2 services. However, any addition of firms and personnel that would be needed for Tier 2 services, as well as Tier 1, would be subject to Authority’s approval meeting all contractual requirements.

Following is a list of general categories for Tier 1 and Tier 2 services that may be required. For each category below, whether for Tier 1 or Tier 2, example references of typical tasks are shown but may not depict all tasks necessary to deliver the required services by the Authority. Other supporting tasks may be required by the Authority for each Contract Task Order as necessary to perform the required work.

**Tier 1**

For this Tier, the Consultant(s) will most likely support the Authority with regard to, but not limited to, the construction activities for the San Bernardino Passenger Rail Project (DSBPRP) and the San Bernardino Transit Center (SBTC), some elements of the Redlands Passenger Rail Project (RPRP) program management, and various studies current and potentially identified by the Authority. Construction management for DSBPRP and SBTC has already been procured.

- Program and Project Management and Staff Augmentation
  - Develop, manage, and administer projects and programs, for such tasks as scope, costs, schedules, finance, and contracts. Write agenda items and make presentations to SANBAG committees and Board of Directors.

- Support interagency and intra-agency coordination and public outreach including the preparation of presentation materials, making presentations, preparation of outreach materials, attending meetings, and assisting staff and other consultants.
- Assist in coordinating programs and projects with agencies such as Federal Transit Administration, Federal Railroad Administration, Southern California Regional Rail Authority, BNSF, County of San Bernardino, other county transportation commissions and authorities, transit agencies, cities, utility agencies and companies, and other local, regional, state, and federal agencies and stakeholders.
- Contract Management - Support in procurements of other consultants and construction contractors on varying projects, including assistance with project delivery and contract administration. Prepare and manage third-party agreements, consultant agreements, amendments, independent cost estimates, scopes of work, Requests for Proposals/Qualifications, and Invitations For Bid
- Project Controls - Create and monitor Quality Assurance/Quality Control (QA/QC) program. Create, update, manage, and maintain the Authority document control system.
- Grant writing, administration, and reporting, and preparation of supporting documentation.
- Transportation Development Act (TDA) – Development of TDA procedure manual.
- Review requests by third-parties effecting Authority’s assets such as railroad rights-of-way, facilities, and other Authority owned properties and interests.
- All other services as requested by Authority.
- Planning/Analysis – Rail and transit and systems and supporting elements, alternative analyses, financial analyses, system and traffic modeling and analyses, ridership modeling, Rail Traffic Control (RTC) modeling, and FTA New Starts and Small Starts; land use analyses, site development entitlements and designs, transit oriented developments; preparation of Short Range Transit Plans (SRTP), Long Range Transit Plans (LRTP), and Title VI reports.
- Environmental – Reports, surveys, mitigation, conceptual analysis, design, and construction support for such items as air quality, biology, cultural resources, archaeology, hazardous materials and waste, noise and vibration, paleontology, and Section 4(f). Development of CEQA and NEPA documentation and reports.
- Engineering and Maintenance – Planning, conceptual designs, preliminary engineering, PS&E, maintenance, and operations for such tasks as track design, transit and rail systems and stations, systems, communications and signals (C&S), video surveillance, safety systems, public address systems, transit and rail maintenance facilities, railroad maintenance of way (MOW), maintenance of equipment (MOE), and design support during construction.
- Construction Management - All services for transit and rail projects for stations, platforms, bridges, buildings, track, grade crossings; architectural, civil, structural, electrical, mechanical, and geotechnical; communications and signals; material testing, estimating, scheduling, constructability reviews, and construction staking.
- Assist with the development and operations of vanpool programs.
- Security system analyses/interface and upgrades.
- Geotechnical - investigations, reports, testing, and construction support.

- Hydraulics and Hydrology – drainage studies and design, floodplain mapping, erosion control, and water quality management.
- Utility Agency Coordination – Investigation, coordination, pot-holing, designs, studies, and relocations.
- Surveying – Topography, boundary, and construction staking surveys; preparation of record maps, as-builts, right-of-way documentation; and aerial photography and topography.
- Right-of-Way – Acquisitions, appraisals, legal descriptions and plats; licenses, easements, and leases; condemnation, negotiations, and notary public services.
- Public Projects – Support Authority with third-party highway grade crossings, grade separation improvements, and bike trails.
- Other duties as assigned and for which general planning, engineering, and construction support expertise is required.

#### Tier 2

- Architecture/Building Design/Interior Design
- Landscape Architecture and Irrigation
- Urban design
- Bus transit studies and analyses
- Entitlements
- Prepare, modify, or update standards, standard plans, design standards, manuals, as-built drawings, track charts, etc.
- Overhead Cantenary Systems (OCS) and traction power systems.
- Preparation of rail and transit operations RPFs.

**Exhibit “B”  
Hourly Rates  
Contract No. C14086  
On-call Transit and Rail Services**

Title	Range (\$/Hr)	
Principal-In-Charge	\$280	\$310
Contract/Program Manager	\$230	\$250
Task Leader	\$230	\$260
Project Manager	\$200	\$230
Safety and Security	\$195	\$215
Railroad Coordinator	\$200	\$230
Project Administrator	\$85	\$105
Clerical	\$40	\$60
QA/QC Manager	\$190	\$215
Project Controls	\$125	\$180
Document Control	\$100	\$130
IT Specialist	\$130	\$150
Project/Task Specialist	\$215	\$240
Ops/Engineering Specialist	\$225	\$250
Finance/Grants Specialist	\$275	\$300
Est/Cost/Risk Specialist	\$255	\$280
System Modeling Specialist	\$190	\$210
Modeling Support	\$80	\$100
Senior Planner	\$240	\$270
Planner	\$140	\$165
Sr. Environmental	\$180	\$200
Environmental Support	\$115	\$150
Sr. Architect	\$190	\$205
Architect	\$185	\$205
TOD/Land Use/Permitting	\$170	\$190
Sr. Engineer	\$170	\$220
Engineer	\$125	\$160
Engineering Intern	\$55	\$80
CADD Designer	\$105	\$130
Design Visualization	\$150	\$180
Computer Graphics	\$85	\$110
**Sr. Resident Engineer	\$175	\$200
**Resident Engineer	\$140	\$170
**Office Engineer	\$110	\$140
**Survey Crew (2-Man)	\$220	\$250
Survey Technician	\$130	\$160
**Field Survey	\$120	\$150
**Sr. Inspector	\$125	\$145
**Inspector	\$90	\$125

\*\*Denotes Field Position

Rates may be adjusted annually based on contract requirements.