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

Revised Agenda Item No. 28 and Support Material

Board of Directors Meeting

December 4, 2013

10:30 a.m.

Location:

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

DISCUSSION

Transit/Commuter Rail

28. Award Construction Contract No. C14002 for the San Bernardino Transit Center

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

1. Award Construction Contract No. C14002 to Kemp Bros. Construction Company, Inc., as the lowest responsive and responsible bidder for the San Bernardino Transit Center in the amount of \$12,623,494, which award is effective upon the later of: (a) the expiration of the bid protest filing period (close of business December 5) without the filing of a bid protest; or (b) if a bid protest is filed, the date the Contracts Manager renders a decision denying the bid protest under SANBAG Procedure 11007, Vendor Protest.
2. Approve Allowances/Contingency for Contract No. C14002 in the amount of \$631,175, effective upon award of Contract No. C14002 to Kemp Bros. Construction Company, Inc.
3. Delegate authority to the Board of Directors Metro Valley Study Session to award the construction contract for the San Bernardino Transit Center to the lowest responsive and responsible bidder and establish a five percent (5%) contingency amount, which delegation is effective only if (a) a bid protest is timely filed and (b) the Contracts Manager renders a decision upholding the bid protest. **Mitch Alderman**

This Agenda Item is being revised to include the recommendation to award Contract No. C14002 to Kemp Bros. Construction Company, Inc. as the lowest responsive and responsible bidder for the San Bernardino Transit Center.



- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
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Minute Action

AGENDA ITEM: 28

Date: December 4, 2013

Subject: Award Construction Contract No. C14002 for the San Bernardino Transit Center

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

1. Award Construction Contract No. C14002 to Kemp Bros. Construction Company, Inc., as the lowest responsive and responsible bidder for the San Bernardino Transit Center in the amount of \$12,623,494, which award is effective upon the later of: (a) the expiration of the bid protest filing period (close of business December 5) without the filing of a bid protest; or (b) if a bid protest is filed, the date the Contracts Manager renders a decision denying the bid protest under SANBAG Procedure 11007, Vendor Protest.
2. Approve Allowances/Contingency for Contract No. C14002 in the amount of \$631,175, effective upon award of Contract No. C14002 to Kemp Bros. Construction Company, Inc.
3. Delegate authority to the Board of Directors Metro Valley Study Session to award the construction contract for the San Bernardino Transit Center to the lowest responsive and responsible bidder and establish a five percent (5%) contingency amount, which delegation is effective only if (a) a bid protest is timely filed and (b) the Contracts Manager renders a decision upholding the bid protest.

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Approved
Board of Directors

Date: _____

Moved: _____ *Second:* _____

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

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	
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Check all that apply.

BRD1312c-maa

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C14002%20Contract.docx>

4. Delegate authority to the Board of Directors Metro Valley Study Session to conduct a public hearing pursuant to Public Contracting Code section 4107.5, in the event of a written objection by any inadvertently listed subcontractors.

Background:

This item provides for award of a new construction contract based on the competitive low bid process. In partnership with Omnitrans, the San Bernardino Associated Governments (SANBAG), acting as the San Bernardino County Transportation Commission (Commission), is proposing to construct the San Bernardino Transit Center (SBTC or Project) near the intersection of Rialto Avenue and E Street in the City of San Bernardino. The Project includes development of a bus facility with twenty-two (22) bus bays, public facilities, and a public plaza. The engineer's construction estimate for the SBTC is \$14,900,000.

In July 2013, the Board of Directors authorized release of Invitation for Bids No. 14002. On July 11, 2013, a contractor's workshop was held to introduce the Project to the contracting community. The purpose of the workshop was to provide a high level overview of the Project, introduce key members of the team and provide for networking opportunities between prime contractors and sub-contractors. Invitation for Bids (IFB) 14002 was released on October 25, 2013, and the pre-bid conference was held on November 1, 2013. At its November 2013 meeting, the SANBAG Board authorized staff to proceed directly to the Board with the bid award without prior policy committee review to ensure certain funding sources were not jeopardized. The funding sources require award of the construction contract by December 31, 2013. A total of two addenda were released for the Project and bids for the Project were due on December 2, 2013. A total of five bids were received. Issuance of the IFB was delayed due to the uncertainty of the availability of federal funding as a result of the Amalgamated Transit Union (ATU) protest of the California Public Employees' Pension Reform Act (PEPRA). Additional delays occurred as a result of a compliance issue surrounding the Buy America provisions in MAP-21 and the ability of the various utilities to comply with the requirements.

The following table shows the total number of bids and their respective amounts. All five bids were reviewed by staff for discrepancies and compliance with the Invitation for Bids requirements. Based on the review Kemp Bros. Construction Company, Inc. bid for \$12,623,494 was found to be the lowest responsive, responsible bidder.

Kemp Bros. Construction Company, Inc.	\$12,623,494
Hal Hays	\$13,142,382
Amoroso	\$13,727,000
USS Cal Builders	\$15,819,167
Morillo	\$16,079,000

Staff is recommending that Contract No. C14002 for the Project be awarded to Kemp Bros. Construction Company, Inc. in the amount of \$12,623,494.

Staff is also recommending approval of Contingency for Contract No. C14002 for the Project, in the amount of \$631,175. With the addition of Contingency the total construction cost is \$13,254,669.

SANBAG's Procedure 11007, Vendor Protest provides that an Interested Party, i.e. an unsuccessful bidder, may file a bid protest for certain specified reasons within three (3) business days from date of bid opening. In order to honor the three day filing period and to address the possibility for a bid protest, the Board's bid award to Kemp Bros. would be effective upon the later of (a) expiration of the bid protest filing period (close of business December 5) without a bid protest being filed; or (b) if a bid protest is filed, the date the Contracts Manager renders a decision denying the bid protest. In the event that a bid protest is filed and the bid protest is decided in favor of the Interested Party, recommendation 3 asks the Board to delegate authority to the Commuter Rail and Transit Committee to award the construction contract and set the contingency amount. These recommendations assure that the construction contract may be awarded before the funding December 31, 2013 deadline.

On Tuesday, December 03, 2013 a facsimile communication was received from Kemp Bros. informing SANBAG staff of an inadvertent clerical error in their subcontractor list. The four subcontractors listed in the bid for tile, landscape, concrete and structural steel were inadvertently listed. Kemp Bros. indicated the error was caused by the bid software used to prepare the bid and is seeking relief pursuant to Public Contracting Code Section 4107.5 which states in part, "any listed subcontractor who has been notified by the prime contractor in accordance with this section as to an inadvertent clerical error shall be allowed six working days from the time of the prime bid opening within which to submit to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file the written notice within six working days shall be primary evidence of his or her agreement that an inadvertent clerical error was made."

In the event written objection is received by the listed subcontractor, SANBAG is required to hold a hearing on the validity of the prime contractor's claim of an inadvertent clerical error. Should a written objection be received within the six day period, staff is recommending the Board of Directors delegate to Metro Valley Study Session authority to conduct the hearing.

Financial Impact: This item is consistent with the SANBAG Fiscal Year 2013/2014 budget. The funding for the construction contract is provided under Task No. 0311 – Transit Capital - Proposition 1B Transit Security Grant, FTA 5307 - Urbanized Area Formula Grants, FTA 5309 – Bus and Bus Facilities, Proposition 1B – PTMISEA, State Transit Assistance Funds, Measure I, Transportation Enhancement Funds and Local Transportation Funds.

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

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



CONTRACT SUMMARY SHEET

Contract No. C 14002 Amendment No. _____

By and Between

San Bernardino Associated Governments and Kemp Bros. Construction, Inc.

Contract Description Construction of the San Bernardino Transit Center

Board of Director's Meeting Date: December 4, 2013

Overview of BOD Action: 1.) Award Construction Contract No. C14002 to Kemp Bros. Construction Company, Inc., as the lowest responsive and responsible bidder for the San Bernardino Transit Center in the amount of \$12,623,494, which award is effective upon the later of: (a) the expiration of the bid protest filing period (close of business December 5) without the filing of a bid protest; or (b) if a bid protest is filed, the date the Contracts Manager renders a decision denying the bid protest under SANBAG Procedure 1107. 2.) Approve Allowances/Contingency for Contract No. C14002 in the amount of \$631,175, effective upon award of Contract No. C14002 to Kemp Bros. Construction Company, Inc. 3.) Delegate authority to the Commuter Rail and Transit Committee to award the construction contract for the San Bernardino Transit Center to the lowest responsive and responsible bidder and establish a five percent (5%) contingency amount, which delegation is effective only if (a) a bid protest is timely filed and (b) the Contracts Manager renders a decision upholding the bid protest.

Is this a Sole-Source procurement? Yes No

CONTRACT OVERVIEW

Original Contract Amount	\$	12,623,494	Original Contingency Amount	\$	631,175
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	
Current Amendment Amount	\$		Contingency Amendment	\$	
TOTAL CONTRACT VALUE	\$	12,623,494	TOTAL CONTINGENCY VALUE	\$	631,175
TOTAL BUDGET AUTHORITY (contract value + contingency)					\$ 13,254,669

Contract Start Date	Current Contract Expiration Date	Revised Contract Expiration Date
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Has the contract term been amended? No Yes - please explain.

FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 0311 – Transit Capital.

A Budget Amendment is required.

How are we funding current FY? Proposition 1B Transit Security Grant, FTA 5307 - Urbanized Area Formula Grants, FTA 5309 – Bus and Bus Facilities, Proposition 1B – PTMISEA, State Transit Assistance Funds, Measure I, Transportation Enhancement Funds and Local Transportation Funds

Federal Funds State Funds Local Funds TDA Funds Measure I Funds

Provide Brief Overview of the Overall Funding for the duration of the Contract:

Proposition 1B Transit Security Grant, FTA 5307 - Urbanized Area Formula Grants, FTA 5309 – Bus and Bus Facilities, Proposition 1B – PTMISEA, State Transit Assistance Funds, Measure I, Transportation Enhancement Funds and Local Transportation Funds

Payable Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

Retention? If yes, indicate % _____.

Disadvantaged Business Enterprise (DBE) Goal _____ %

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

CONTRACT C14002

BY AND BETWEEN

SANBAG

AND

FOR

SAN BERNARDINO TRANSIT CENTER PROJECT

This contract, (referred to as "Contract"), is made and entered into by and between San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Commission, ("SANBAG"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and, enter name of (referred to hereafter as "CONTRACTOR") whose address is; _____ . SANBAG and CONTRACTOR are each a "Party" and collectively the "Parties" herein.

RECITALS:

WHEREAS, SANBAG has determined that it requires construction of the Downtown San Bernardino Passenger Rail Project; and

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

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

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

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE 1 - CONTRACT DOCUMENTS

The complete Contract includes all of the following Contract Documents: the Contract Articles; CONTRACTOR's Bid dated enter month, day, year and all Forms submitted with Bid; Performance and Payment Bonds; the Labor Surcharge and Equipment Rental Rates in effect on the date the Work is accomplished; Plans and Specifications entitled Downtown San Bernardino Passenger Rail Project; Addenda Nos. enter numbers; Project

Plans and Specifications dated August 30, 2013; Special Conditions dated October 17, 2013; and all other Invitation for Bids 14002 (IFB) requirements.

ARTICLE 2 - BONDS

CONTRACTOR will furnish a Payment bond, in the form provided by SANBAG in the IFB, in an amount of \$2,500,000, and a faithful Performance bond in the form provided by SANBAG in the IFB, in an amount equal to one hundred percent (100%) of the contract price, said bonds, to be secured from a surety company satisfactory to SANBAG within ten (10) working days of the Notice of Award of this Contract and prior to the commencement of work under this Contract. Bonds shall remain in full force and effect for a period of one (1) year following the date of filing of the Notice of Completion. Notwithstanding any other provision set forth in this Contract, performance by a Surety or Guarantor of any obligation of CONTRACTOR shall not relieve CONTRACTOR of any of its obligations thereunder.

ARTICLE 3 - RETENTION/PROMPT PAYMENT

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

ARTICLE 4 - COMPENSATION

4.1 SANBAG agrees to pay, and CONTRACTOR agrees to accept in full payment for the Work outlined in the Contract documents, the sum of \$ enter dollar and cents amount **DOLLARS AND CENTS** (\$), subject to additions and deductions, if any, in accordance with said documents. Payment shall not be made more often than once each thirty (30) days, nor shall the amount be paid in excess of ninety-five percent (95%) of the Contract at time of completion. Payment requests shall not be deemed properly completed unless certified payrolls and any other mandatory submittals have been properly completed and submitted for each week worked during the time period covered by said payment request. Final payment to be made after acceptance

of the Project by SANBAG. The Bid Item List that follows is incorporated into this Contract by this reference.

**INSERT BID ITEM LIST (BASE BID)
HERE**

**AFTER AWARD OF
PROJECT**

**INSERT BID ITEM LIST (ADD
ALTERNATE) HERE**

AFTER AWARD OF

PROJECT

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

ARTICLE 5 - TAXES, DUTIES AND FEES

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

ARTICLE 6 - AVAILABILITY OF FUNDS

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

ARTICLE 7 - PERMITS AND LICENSES

CONTRACTOR agrees that he/she is currently the holder of a valid Class "A" or "B" license as a CONTRACTOR in the State of California and that the license is the correct class of license for the work described in the project plans and specifications. CONTRACTOR further agrees to maintain license through the entire duration of Contract without additional compensation from SANBAG. CONTRACTOR also agrees to keep current with all requirements by the City of San Bernardino, other municipal agencies, and BNSF Railway.

ARTICLE 8 - DOCUMENTATION AND RIGHT TO AUDIT

CONTRACTOR shall provide SANBAG, the U.S. Department of Transportation (DOT), including but not limited to the Federal Transit or Federal Highway Administration, and the Comptroller General of the United States, or other authorized representatives or agents of SANBAG, access to CONTRACTOR's records which are directly related to this Contract for the purpose of inspection, auditing or copying. CONTRACTOR shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to

professional review and audit, for a period of three (3) years from the date of final payment by SANBAG, except in the event of litigation or settlement of claims arising out of this Contract in which case CONTRACTOR agrees to maintain records through the conclusion of all such litigation, appeals or claims related to this Contract. CONTRACTOR further agrees to maintain separate records for costs of work performed by change order. CONTRACTOR shall allow SANBAG, California Department of Transportation (Caltrans), Federal Highway Administration (FHWA) or Federal Transit Administration (FTA), or its representatives or agents to reproduce any materials as reasonably necessary.

ARTICLE 9 - SCHEDULE

CONTRACTOR agrees to complete the work within the time period as stipulated in the Special Conditions and Division 1 Specifications attached herein. CONTRACTOR shall incur no costs and shall not perform or furnish any work, services or equipment under this Contract, unless and until SANBAG has issued a written Limited Notice To Proceed (LNTP).

ARTICLE 10 - NONDISCRIMINATION/ EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

the following actions will be taken as a minimum:

- 10.3.1 Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the CONTRACTOR's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - 10.3.2 All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the CONTRACTOR's EEO obligations within thirty days following their reporting for duty with the CONTRACTOR.
 - 10.3.3 All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the CONTRACTOR's procedures for locating and hiring minority group employees.
 - 10.3.4 Notices and posters setting forth the CONTRACTOR's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - 10.3.5 CONTRACTOR's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
- 10.4 Recruitment: When advertising for employees, CONTRACTOR will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- 10.4.1 CONTRACTOR will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, CONTRACTOR will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to CONTRACTOR for employment consideration.
 - 10.4.2 In the event CONTRACTOR has a valid bargaining agreement providing for exclusive hiring hall referrals, CONTRACTOR is expected to observe the provisions of that agreement to the extent that the system permits CONTRACTOR's compliance with EEO contract provisions. (The Department Of Labor (DOL) has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the CONTRACTOR to do the same, such implementation violates Executive Order 11246, as amended.)
 - 10.4.3 CONTRACTOR will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
- 10.5 Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring,

upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed

10.5.1 CONTRACTOR will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

10.5.2 CONTRACTOR will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

10.5.3 CONTRACTOR will periodically review-selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONTRACTOR will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

10.5.4 CONTRACTOR will promptly investigate all complaints of alleged discrimination made to the CONTRACTOR in connection with his obligations under this Contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONTRACTOR will inform every complainant of all of his avenues of appeal.

10.6 Training and Promotion: CONTRACTOR will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

10.6.1 Consistent with CONTRACTOR's work force requirements and as permissible under Federal and State regulations, the CONTRACTOR shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

10.6.2 CONTRACTOR will advise employees and applicants for employment of available training programs and entrance requirements for each.

10.6.3 CONTRACTOR will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

10.7 Unions: If CONTRACTOR relies in whole or in part upon unions as a source of employees, CONTRACTOR will use its best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by CONTRACTOR either directly or through a CONTRACTOR's association acting as agent will include the procedures set forth below:

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

employees; and the progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

10.9.1 CONTRACTOR will submit an annual report to the SANBAG each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. CONTRACTOR will be required to collect and report training data.

ARTICLE 11 - CONFLICT OF INTEREST

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

ARTICLE 12 - REPRESENTATIONS

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

ARTICLE 13 - PROPRIETARY RIGHTS/CONFIDENTIALITY

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

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

13.3 Except as reasonably necessary for the performance of Work, CONTRACTOR agrees that it, its employees, agents, and subcontractors will hold in confidence and not divulge to third parties without prior written consent of SANBAG, any information obtained by CONTRACTOR from or through SANBAG in connection with CONTRACTOR's performance of this Contract, unless (a) the information was known to CONTRACTOR

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

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

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

ARTICLE 14 - TERMINATION

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

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

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

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

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

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

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

ARTICLE 15 - STOP WORK ORDER

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

ARTICLE 16 - CLAIMS

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

ARTICLE 17 - INSURANCE

Without in anyway affecting the indemnity provisions in this Contract, CONTRACTOR shall, at the CONTRACTOR's sole expense, and prior to commencement of any Work, procure and maintain in full force, insurance with carriers and with terms and conditions acceptable to SANBAG through the expiration of the patent deficiency in construction statute of repose set

forth in Section 337.1 of the Code of Civil Procedure. The policies shall be written by a carrier authorized to do business in the State of California with a recent A.M. Best rating of A-VII or better, and shall be written with at least the following limits of liability:

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

- Coverage A. Statutory Benefits
 - Coverage B. Employer's Liability
 - Bodily Injury by accident - \$1,000,000 per accident
 - Bodily Injury by disease - \$1,000,000 policy limit/\$1,000,000 each employee
- Waiver of Subrogation endorsement naming SANBAG and its contracting entities as identified in this Article.

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

- \$2,000,000 per Occurrence Limit/ \$10,000,000 in the aggregate
- \$1,000,000 Personal Advertising Injury Limit/\$2,000,000 in the aggregate
- \$2,000,000 Products/Completed Operations in the aggregate
- \$5,000,000 umbrella or excess liability.
- Combined total for Commercial General Liability and Excess Liability limits of \$25,000,000 will be required for projects with a contract value in excess of \$25,000,000.
- Umbrella or excess policy shall follow form over the CONTRACTOR's General Liability coverage and shall provide a separate aggregate limit for products and completed operations coverage. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
 - a) Products and Completed Operations coverage. CONTRACTOR agrees to maintain this coverage for 10 years following the acceptance of Work or until all applicable Statutes of Limitation expire, whichever length of time is longer. CONTRACTOR further agrees to continue naming SANBAG and any other parties of interest as Additional Insured(s) for the entire length of time as described herein.
 - b) Contractual Liability without any modification of the definition of "Insured Contract".
 - c) Property Damage coverage including completed operations or its equivalent.
 - d) Coverage is to be on an "occurrence" form. "Claims Made" and "Modified Occurrence" forms are not acceptable except where "Professional Liability" coverage is required.
 - e) An endorsement stating that any aggregate limits apply on a "per project" and on a "per location" basis.
 - f) The project name must be indicated under "Description of Operations/Locations".

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

- Auto Liability limits of not less than \$5,000,000 each accident.
- Combined Bodily Injury and Property Damage Liability insurance.

- Coverage must include, but not limited to, owned autos, hired or non-owned autos.
- Coverage must include an additional insured endorsement as identified in this Article.

17.4 Proof of Coverage –

- Evidence of insurance in a form acceptable to SANBAG, including the required “additional insured” endorsements, shall be provided within 10 business days after Notice of Award is given to CONTRACTOR. Prior to commencing any work, CONTRACTOR shall furnish SANBAG with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in this Article.
- If the insurance company elects to cancel or non-renew coverage for any reason, CONTRACTOR will provide SANBAG 30 days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONTRACTOR will provide SANBAG 10 prior days written notice.
- Certificates of Insurance, as evidence of required insurance, for the General Liability and Auto Liability and Umbrella-Excess Liability policies shall set forth deductible amounts applicable to each policy and all exclusions which are added by endorsement to each policy, and shall also include the Contract Number and Project Manager’s name on the face of the certificate.
- SANBAG may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to interests of SANBAG. Regardless of the allowance of exclusions or deductions by SANBAG, CONTRACTOR shall be responsible for any deductible amount and shall warrant that the coverage provided to SANBAG is consistent with the requirements of this section.
- CONTRACTOR shall provide certified copies of all insurance policies required within ten (10) days of SANBAG’s written request of said copies. All such certificates, except those for Worker’s Compensation insurance, shall include San Bernardino Associated Governments and all of its associated entities and capacities, including the San Bernardino County Transportation Commission, San Bernardino County Transportation Authority, San Bernardino Congestion Management Agency and Service Authority for Freeway Emergencies, and their officers, employees, agents and volunteers and Omnitrans, as additional insureds on Commercial General Liability insurance and auto insurance. With respect to liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR under this Contract, coverage for such additional insureds shall not extend to liability:
 - (a) Arising from any defective or substandard condition of the Roadway which existed at or prior to the time the CONTRACTOR commenced work, unless such condition has been changed by the Work or scope of the work requires the CONTRACTOR to maintain existing Roadway facilities and the claim arises from the CONTRACTOR’ failure to maintain; or
 - (b) For claims occurring after the Work is completed and accepted unless these claims are directly related to alleged acts or omissions of the CONTRACTOR which occurred during the course of the Work; or
 - (c) To the extent prohibited by Section 11580.04 of the Insurance Code.

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

provisions at a later date.

- 17.7 All coverages for subcontractors shall be subject to all of the requirements stated herein. CONTRACTOR shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor
- 17.8 If requested by SANBAG, CONTRACTOR shall submit copies of all required insurance policies including endorsements.
- 17.9 At a minimum, the CONTRACTOR shall procure and maintain in full force, insurance with carriers and with terms and conditions acceptable to SANBAG as shown below. Since the Work involves right-of-entry permits and other requirements from the Railroad Operators (Southern California Regional Rail Authority (SCRRA) and BNSF Railway), the CONTRACTOR shall meet all the requirements of said Railroad Operators including naming SANBAG, SCRRA, Omnitrans, and BNSF as additionally insureds.

The policy must contain the following endorsement, which must be stated on the certificate of insurance: Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing the Southern California Regional Rail Authority and BNSF Railway in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

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

- (a) Contractual Liability – Railroads’ ISO form showing “San Bernardino Associated Governments Property” as the Designated Job Site.
- (b) Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.
- (c) Designated Insured Endorsement ISO form CA 20 48 02 99 (or a substitute form providing equivalent coverage) in favor of SANBAG, its authorized officers, employees, agents, and volunteers.
- (d) Coverage for Certain Operations in Connection with Railroads’ ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing “San Bernardino Associated Governments Property as the designated job site.
- (e) Motor Carrier Act Endorsement-Hazardous Materials clean up (MCS-90) if required by law.
- (f) Railroad Protective Liability Insurance – CONTRACTOR shall carry Railroad Protective Liability Insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) naming SANBAG, Omnitrans, the State of California and BNSF as a Named Insured covering all operations by or on

behalf of CONTRACTOR providing insurance for bodily injury liability, and property damage liability. The limits of liability shall not be less than \$5,000,000 per occurrence and aggregate of \$10,000,000. A binder stating the policy is in place must be submitted to SANBAG and BNSF before the Work may be commenced and until the original policy is forwarded to SANBAG.

ARTICLE 18 - INDEMNITY

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by SANBAG) and hold harmless SANBAG and its authorized officers, employees, agents and volunteers (indemnitees) from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by the indemnitees on account of any claim except where such indemnification is prohibited by law. CONTRACTOR's obligations under this Article shall apply regardless of the existence or degree of fault of indemnitees. CONTRACTOR's indemnification obligation applies to the indemnitees' "passive" negligence but does not apply to the indemnitees' "sole" or "active" negligence or "willful misconduct" within the meaning of Civil Code Section 2782.

ARTICLE 19 - OWNERSHIP OF DOCUMENTS

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

ARTICLE 20 - RECORD AND INSPECTION AND AUDITING

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

ARTICLE 21 - INDEPENDENT CONTRACTOR

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

or for any purpose whatsoever be considered employees or agents of SANBAG.

ARTICLE 22 - ATTORNEY'S FEES

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

ARTICLE 23 - GOVERNING LAW AND VENUE

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

ARTICLE 24 - FEDERAL, STATE AND LOCAL LAWS

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

ARTICLE 25 - PRECEDENCE

25.1 The following order of precedence shall apply: First, Change Orders and Addenda; Second, Special Conditions, appendices, and permits; Third, Contract Articles, attachments, and forms; Fourth, IFB provisions; Fifth, CONTRACTOR's Bid and Certifications submitted with Bid; Sixth, Project Specific Specifications; Seventh, Plans; Eighth, bid reference materials.

ARTICLE 26 - COMMUNICATIONS AND NOTICES

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

To CONTRACTOR	To SANBAG
	San Bernardino Associated Governments

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

ARTICLE 27 - FEDERAL CHANGES

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

ARTICLE 28. NO OBLIGATION BY THE FEDERAL GOVERNMENT

(1) CONTRACTOR acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the 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 the CONTRACTOR, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the Contract. (2) CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

ARTICLE 29 - LIQUIDATED DAMAGES

Should CONTRACTOR fail to complete all Work within the time specified herein, including any written authorized changes, the actual damages to SANBAG for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, CONTRACTOR shall pay SANBAG the sum of \$7,824 each calendar day of delay as identified in the weekly statement of working days issued by the SANBAG. SANBAG shall not withhold liquidated damages if the delay is determined by SANBAG to be excusable in accordance with the Force Majeure article of this Contract. SANBAG may extend the period of performance of this Contract when in its sole judgment, sufficient justification exists to do so.

ARTICLE 29 - ASSIGNMENT

CONTRACTOR agrees not to assign, sell, transfer, convey or otherwise dispose of all or any rights or obligations of CONTRACTOR under this Contract either voluntarily or by operation of law without prior written consent from SANBAG.

ARTICLE 30 - SUBCONTRACTS

30. 1 CONTRACTOR shall perform with its own organization Contract Work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the Contract) of the total original Contract price, excluding any specialty items designated by SANBAG.

Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original Contract price before computing the amount of work required to be performed by CONTRACTOR's own organization.

30. 1.1 "Its own organization" shall be construed to include only workers employed and paid directly by the prime CONTRACTOR and equipment owned or rented by the prime CONTRACTOR, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime CONTRACTOR.

30. 1.2 "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the Contract as a whole and in general are to be limited to minor components of the overall contract. The Contract amount upon which the requirements set forth in this Contract is computed includes the cost of material and manufactured products, which are to be purchased or produced by the CONTRACTOR under the Contract provisions.

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

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

ARTICLE 31 - COORDINATION WITH OTHER CONTRACTS

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

ARTICLE 32 - PREVAILING WAGE REQUIREMENTS

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

32.2 Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of the Act.

ARTICLE 33 - SAFETY

33.1 In the performance of this Contract, CONTRACTOR shall comply with all applicable federal, state, and local laws governing safety, health, sanitation (23 CFR 635), and railroads (49 CFR Sections 200 through 299). The CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as SANBAG may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. It is a condition of this Contract, and shall be made a condition of each subcontract, which the CONTRACTOR enters into pursuant to this Contract, that CONTRACTOR and any subcontractor shall not permit any employee, in performance of this Contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Section 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Section 333).

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

Certain Work under the Contract shall be performed within Railroad right-of-way or shall be accessed via railroad right-of-way owned by SANBAG and operated by BNSF; therefore, CONTRACTOR and CONTRACTOR's employees, agents and representatives shall full comply with BNSF's rules, regulations, restrictions, codes of conduct, standards, procedures, and safety obligations. Any deviations from same will require BNSF's advance approval, in writing.

ARTICLE 34. ENERGY CONSERVATION

CONTRACTOR 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.

ARTICLE 35, - PROGRAM FRAUD AND FALSE STATEMENTS

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

ARTICLE 36 - NONSEGREGATED FACILITIES

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

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

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

ARTICLE 37 - INCORPORATION OF FTA TERMS

The preceding Contract provisions include, in part, certain Standard Terms and Conditions required by the United States Department of Transportation (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 in the FTA Best Practices Manual Appendix A-1 shall be deemed to control in the event of a conflict with other provisions contained in this Contract. CONTRACTOR 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.

ARTICLE 38 - SPECIFIC FEDERAL REQUIREMENTS

38.1 Without limiting the generality of the CONTRACTOR's obligations under this Contract to comply with all applicable federal laws and regulations, CONTRACTOR specifically agrees to comply with the following:

38.1.1 Buy America. CONTRACTOR agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

38.1.2 Fly America. CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR, Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

ARTICLE 39 - GRATUITIES

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

ARTICLE 40 - CONFIDENTIALITY

Any SANBAG materials to which the CONTRACTOR or its agents has access to or materials

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

ARTICLE 41 - CONVICT LABOR

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

ARTICLE 42 - INSPECTION OF SITE

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

ARTICLE 43 - RECYCLED PRODUCTS

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

ARTICLE 44 - CLEAN WATER REQUIREMENTS

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

ARTICLE 45 - CARGO PREFERENCE REQUIREMENTS

CONTRACTOR agrees to comply and ensure that it will comply with 46 U.S.C. Section 1241 and 46 CFR Part 381, regarding the use of United States-Flag vessels for equipment, materials or commodities transported by ocean vessels.

ARTICLE 46 – SEISMIC SAFETY -

CONTRACTOR 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. The contractor 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.

ARTICLE 47 - DRUG FREE WORKPLACE

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

ARTICLE 48 - SEVERABILITY

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

ARTICLE 49 - FORCE MAJEURE

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

ARTICLE 50 - INCORPORATION OF RECITALS

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

ARTICLE 51 - EFFECTIVE DATE

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

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

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the day and year first written below, but effective as of the day and year first set forth above.

CONTRACTOR

SANBAG

By: _____
Name
Title

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

Date: _____

Date: _____

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

APPROVED AS TO FORM

License Number

By: _____
Eileen Monaghan Teichert
General Counsel

Federal Employer
Identification Number

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

BOND FORMS

SANBAG

Contract No. C14002

PAYMENT BOND FORM

KNOW ALL MEN BY THESE PRESENTS:

That the San Bernardino County Transportation Commission (hereinafter referred to as (SANBAG) and _____ (hereinafter referred to as Principal) have by written agreement dated, _____ 2013, entered into a contract identified as:

CONTRACT No.: C14002 (hereinafter referred to as the Contract); and

That, pursuant to law and said Contract, and before entering upon the performance of said Contract, the principal is required to file with SANBAG a good and sufficient bond to secure the payment of labor and materials claims.

NOW, THEREFORE, said Principal and _____ insert _____ as corporate surety (hereinafter referred to as Surety), Surety shall be listed in the Insurance Organizations Authorized by the Insurance Commissioner to Transact Business of Insurance in the State of California published by the Department of Insurance, State of California or successor publications, are held firmly bound unto SANBAG in the amount of \$ 2,500,000.00 for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said principal, his/her or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named or referred to in Section 3181 of the California Civil Code, or amounts due under Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the CONTRACTOR and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor as required by Division 3, Part 4, Title XV, Chapter 7 (commencing at Section 3247) of the California Civil Code, or this bond, then said Surety will pay for the same, in an amount not to exceed the amount hereinafter set forth.

This bond shall insure to the benefit of any and all persons, companies and corporations named or referred to in Section 3181 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

And the said Surety, for value received, hereby stipulates and agrees that all alterations, extensions of time, extra and additional work, and other changes authorized by the Specifications or any part of the contract may be made without securing consent of the Surety on this bond, and any such actions shall not in any way affect the obligations of the Surety on this bond. Surety does hereby waive notice of any alterations, extensions of time, extra and additional work to the terms of the Contract or to the Specifications.

In the event suit is brought upon this Bond by SANBAG and judgment is recovered, Surety shall pay all costs incurred by SANBAG in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

Principal: _____

Dated _____

Signature of Principal

Surety

Address

City, State and Zip

Dated _____

Signature of Surety

NOTE: Signatures of those executing for Surety MUST be properly acknowledged.

NOTE: This form may be reproduced for transmittal to the Surety for execution.

SANBAG

Contract No. C14002

PERFORMANCE BOND FORM

KNOW ALL MEN BY THESE PRESENTS:

That the San Bernardino County Transportation Commission (hereinafter referred to as SANBAG) and _____ (hereinafter referred to as Principal) have by written agreement dated _____, 2013, entered into a contract identified as:

CONTRACT NO. C14002

(Hereinafter referred to as the Contract); and that, the Principal is required under the terms and conditions of said Contract to furnish a bond for the faithful performance of Contract.

NOW, THEREFORE, said Principal and _____ as corporate surety (hereinafter referred to as Surety), Surety shall be listed in the Insurance Organizations Authorized by the Insurance Commission to Transact Business of Insurance in the State of California published by the Department of Insurance, State of California or successor publications, are held firmly bound unto SANBAG in the amount of \$ _____ (\$ _____) for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the said principal, his/her or its subcontractors, heirs, executors, administrators, successors, or assigns, shall perform all of the covenants, conditions and agreements in said Contract and any alteration made as herein provided, in his/her or their part, to be kept and performed at the time, and in the manner therein specified, and shall indemnify and save harmless, SANBAG its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force, virtue and affect.

And the said Surety, for value received, hereby stipulates and agrees that all alterations, extensions of time, extra and additional work, and other changes authorized by the Specifications or any part of the contract may be made without securing consent of the Surety on this bond, and any such actions shall not in any way affect the obligations of the Surety on this bond. Surety does hereby waive notice of any alterations, extensions of time, extra and additional work to the terms of the Contract or to the Specifications.

In the event suit is brought upon this Bond by SANBAG and judgment is recovered, Surety shall pay costs incurred by SANBAG in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

Principal: _____

Dated _____

Signature of Principal

Surety

Address

City, State and Zip

Dated _____

Signature of Surety

NOTE: Signatures of those executing for Surety MUST be properly acknowledged.

NOTE: This form may be reproduced for transmittal to the Surety for execution.