



Contract Number

23.186

SAP Number

N/A

Sheriff/Coroner/Public Administrator

Department Contract Representative	Kelly Welty, Chief Deputy Director of Sheriff's Administration
Telephone Number	(909) 387-0640
Contractor	Southern California Regional Rail Authority – Metrolink
Contractor Representative	Fred Leung, Principal Contract & Compliance Administrator
Telephone Number	(213) 452-0436
Contract Term	03/15/2023 through 06/30/2025
Original Contract Amount	\$5,656,205
Amendment Amount	-----
Total Contract Amount	\$5,656,205
Cost Center	4430001000

Briefly describe the general nature of the contract:

Revenue Agreement with the Southern California Regional Rail Authority – Metrolink (SCRRA – Metrolink Contract No. SP594-23), including non-standard terms, for the Sheriff/Coroner/Public Administrator to provide law enforcement services for the Redlands Passenger Rail Line, in an estimated amount of \$5,656,205 for the period of March 15, 2023 through June 30, 2025, with the option to extend by two additional one-year periods; and authorize the Sheriff/Coroner/Public Administrator or Undersheriff to revise and execute amendments to Schedule B – Cost Schedule of the Revenue Agreement, annually, to update the cost of service based on the Board of Supervisors approved Sheriff/Coroner/Public Administrator budget for 2023-24 and 2024-25, subject to review by County Counsel.

FOR COUNTY USE ONLY

Approved as to Legal Form



Richard D. Luczak, Deputy County Counsel

Date 3/19/2023

Reviewed for Contract Compliance



Date

Reviewed/Approved by Department

Kelly Welty, Chief Deputy Director of Sheriff's
Administration

Date 3/19/23



METROLINK.

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

metrolinktrains.com

CONTRACTS & PROCUREMENT

CONTRACT SP594-23 REDLANDS PASSENGER RAIL LAW ENFORCEMENT SERVICES



Metro



cta
santa bernardino county
transportation authority



CONTRACT AGREEMENT

Between

San Bernardino County Sheriff's Department
Bureau of Administration
655 East Third Street
San Bernardino, CA 92415

Telephone: (909) 387-3465
Email: jtorres@sbcasd.org

Project Manager:
Jose L. Torres / Sheriff's Administrative
Manager

And

Southern California Regional Rail Authority
900 Wilshire Blvd, Suite 1500
Los Angeles, CA 90017
(hereinafter "Authority")

CONTRACT NO. SP594-23 for
REDLANDS PASSENGER RAIL
LAW ENFORCEMENT SERVICES

AWARDED: January 27, 2023

Contract Amount: \$5,656,205.00

Authority Project Manager:

Name: Tinh Quach
Title: Manager II, Security
Telephone: (213) 494-8386
Email: QuachT@scrra.net

Contract Administrator:

Name: Fred Leung
Title: Principal Contract & Compliance
Administrator
Telephone: (213) 452-0436
Email: leungf@scrra.net

**SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
METROLINK COMMUTER RAIL SYSTEM**

CONTRACT NO. SP594-23

**REDLANDS PASSENGER RAIL
LAW ENFORCEMENT SERVICES**

This Contract is made and entered into as of this 9th day on March 2023 by and between the Southern California Regional Rail Authority (hereinafter referred to as "Authority") and San Bernardino County by and through its included Sheriff's/Coroner/Public Administrator (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, the Authority is a joint powers Authority organized under Sections 6500 et seq. of the California Government Code and Section 130255 of the California Public Utilities code with power to contract for services described in Attachment A to this Contract entitled "Attachment A - Scope of Work" (the "Services");

WHEREAS, the Contractor is a public law enforcement entity currently providing law enforcement services in a jurisdiction within the State of California;

WHEREAS, the Contractor represents it is qualified and willing to perform the Services set forth in this Contract for the compensation and in accordance with the terms, requirements and conditions herein specified;

1. SCOPE OF WORK

The Contractor will perform the Services and related tasks as described in Attachment A - Scope of Services attached hereto and is incorporated by reference into and made a part of this Contract.

This is a non-exclusive Contract, whereby the Authority may, in collaboration and agreement with Contractor, augment the Services with its own forces or forces of another contractor to patrol the Redlands Passenger Rail (RPR)- Arrow Service. The Contractor will cooperate fully with the Authority's staff or other contractor that may be providing similar or the same Services for the Authority.

2. PERIOD OF PERFORMANCE

The period of performance will be from March 15, 2023 ("Effective Date") to June 30, 2025, unless earlier terminated pursuant to the provisions of this Contract.

3. PAYMENT

- A. For the Contractor's full and complete performance of its obligations under this Contract, the Authority will pay the Contractor in accordance with the Attachment B – Cost Schedule, incorporated by reference into and made a part of this Contract and

subject to the maximum cumulative payment obligation.

The Authority's maximum cumulative payment obligation under this Contract will be \$5,656,205.00, subject to change documented by an amendment to this Agreement signed by both parties, as listed in Attachment B – Cost Schedule, including all amounts payable to the Contractor for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including but not limited to leases, materials, taxes, insurance, and profit. Authority will be responsible for payment of overtime costs incurred by Sheriff's staff for services requested by the Authority, or otherwise necessary to deliver and supplement services under this Contract, that are outside the assigned staff's regular shift(s).

B. Invoicing

The Contractor will invoice the Authority monthly no later than the 15th of each month. The Contractor will furnish information as may be requested by the Authority to substantiate the validity of an invoice.

The Contractor will submit an electronic copy of the invoice to accountspayable@scrra.net; and cc the Project Manager. Should the Contractor not be able to transmit the invoice electronically, the original of the invoice should be forwarded to Accounts Payable and one copy of the invoice may be forwarded to the Chief Finance Officer at the address:

Southern California Regional Rail Authority
900 Wilshire Blvd, Suite 1500
Los Angeles, CA 90017

Each invoice will include the following information:

- Contract Agreement number
- CTO identification number (If applicable)
- Purchase Order number (If applicable)
- Detail description of the services rendered
- Time period covered by the invoice
- Amount of payment requested
- Information as requested by the Authority

C. Payment

The Authority will remit payment within 30 calendar days of approval of the invoices by the Authority's Project Manager.

In its reasonable discretion, Authority may decline to make full payment for any Services until such time as the Contractor has documented, to the Authority's satisfaction, that the Contractor has fully completed all Services for which it has billed.

In the event the Authority should overpay the Contractor, such overpayment will not be construed as a waiver of the Authority's right to obtain reimbursement for the overpayment. Upon discovering any overpayment, either on its own or upon notice of the Authority the Contractor will, within 30 days, reimburse the Authority the entire overpayment.

In the event the Authority should underpay, in which there is no question or dispute about a particular charge, such underpayment will not be construed as a waiver of Contractor's right to obtain payment from the Authority. Upon discovering any underpayment, either on its own or upon notice by the Contractor, Authority will, within 30 days, provide the Contractor the underpayment amount.

4. AUDIT AND INSPECTION RECORDS

The Contractor agrees that at reasonable times during normal business hours and with the agreement of Contractor, such agreement not to be unreasonably withheld or delayed, the Authority or any duly authorized representative will have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, timecards, employment records or other records relating to this Contract. Such material, including all pertinent cost, accounting, financial records and proprietary data will be kept and maintained by the Contractor pursuant to San Bernardino County's document retention schedule. The foregoing will not include access to workpapers by the audited entity, as such access could impair the effectiveness of the audit work plan.

The Contractor agrees to permit any of the foregoing parties to reproduce by any reasonable means to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the Authority, the Federal Highway Administration ("FHWA") Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

5. NOTIFICATION

All notices hereunder concerning this Agreement and the services to be performed shall be electronically transmitted, or physically transmitted by courier, overnight, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

To the Authority
Southern California Regional Rail
Authority
900 Wilshire Blvd., Suite 1500
Los Angeles, CA 90017
Attn: Fred Leung, Principal Contract &
Compliance Administrator

To the Contractor
San Bernardino County Sheriff's
Department
Bureau of Administration
655 E. Third Street
San Bernardino, CA 92415-0061
Attn: Jose L. Torres
Sheriff's Administrative Manager

6. AUTHORITY AND CONTRACTOR'S REPRESENTATIVES

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract. Each party represents and warrants to the other that the execution and delivery of this Contract and the performance of such party's obligations hereunder have been duly authorized and that the Contract is a valid and legal obligation, binding on such party and enforceable in accordance with its terms.

The Contractor, in its sole discretion, but giving due consideration to the needs of Authority, will assign key personnel to provide Services under this contract.

7. TERMINATION FOR CONVENIENCE

- A. The Authority may terminate this Contract for the Authority's convenience at any time by giving the Contractor not less than 90 days written notice thereof. Upon receipt of said notice, the Contractor will immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The Authority will pay the Contractor its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by the Contractor to implement such termination.
- B. The Contractor may terminate this Contract for the Contractor's convenience at any time by giving the Authority not less than 90 days written notice thereof. The Authority will pay the Contractor its reasonable and allowable costs for Services through the effective date of termination.
- C. Following a termination for convenience by either Party and the payment of amounts specified above, neither party will have any further claims against the other under this Contract. Notwithstanding the foregoing, in the event the Contractor provides any services to Authority on a holdover basis after the date of the Contract termination, Authority shall fully reimburse Contractor for all costs of providing such services. All finished or unfinished documents and materials procured for or produced under this Contract will become Authority's property upon date of such termination.

- D. Contractor shall have the right to terminate this Contract if Authority does not make timely payments of its obligations hereunder to Contractor after providing written notice and 30 days to cure.

8. TERMINATION FOR BREACH OF CONTRACT

- A. If the Contractor fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the Authority may give the Contractor written notice of such default. If the Contractor does not cure such default or provide a plan to cure such default which is acceptable to the Authority within the time permitted by the Authority, then the Authority may terminate this Contract due to the Contractor's breach of this Contract.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against the Contractor, or if the Contractor makes an assignment for the benefit of creditors, then the Authority may immediately terminate this Contract.
- C. If the Contractor violates Article titled COMPLIANCE WITH LOBBYING POLICIES, then the Authority may immediately terminate this Contract.
- D. In the event the Authority terminates this Contract as provided in this Article, the Authority may procure, upon such terms and in such manner as the Authority may reasonably deem appropriate, Services similar in scope and level of effort to those so terminated, and pursue such remedies as permitted by applicable law.
- E. All Deliverables, as defined in Section 15, produced or procured under this Contract will become the Authority property upon date of such termination as specified within Section 7, TERMINATION FOR CONVENIENCE.
- F. If, after notice of termination of this Contract under the provisions of this Article, it is determined for any reason that the Contractor was not in default under the provisions of this Article, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to Section 7, TERMINATION FOR CONVENIENCE.
- G. The rights and remedies of the Parties provided in this Article will not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

9. ASSIGNMENT

This Contract, any interest herein or claim hereunder, may not be assigned by the Contractor either voluntarily or by operation of law, nor may all or any part of this Contract be subcontracted by the Contractor, without the prior written consent of the Authority. Consent by the Authority will not be deemed to relieve the Contractor of its obligations to comply fully with all terms and conditions of this Contract.

10. SUBCONTRACTING

The Authority hereby consents to the Contractor's subcontracting of portions of the services to the parties identified below for the functions described in the Contractor's proposal. The Contractor will include in each subcontract agreement the stipulation that the Contractor, not the Authority, is solely responsible for payment to the subcontractor for the amounts owing and that the subcontractor will have no claim, and will take no action against the Authority, Member Agencies or officers, directors, employees or sureties thereof for nonpayment by the Contractor.

Subcontractors' Names and
Addresses

Services to Be Performed

N/A

11. INDEPENDENT CONTRACTOR

The Contractor's relationship to the Authority in the performance of this Contract is that of an independent contractor. The Contractor's personnel performing Services under this Contract will always be under the Contractor's exclusive direction and control and will be employees of the Contractor and not employees of the Authority. The Contractor will pay all wages, salaries and other amounts due its employees in connection with this Contract and will be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

Contractor shall perform the Services utilizing due care and competence, consistent with law enforcement industry practice, in its performance under this Agreement.

12. INSURANCE

Throughout the duration of this Contract, the selected Contractor must maintain the following insurance, which will be full-coverage insurance. The Contractor will not of its own initiative cause such insurance to be canceled or materially changed during the course of this Contract.

- A. Commercial General Liability to include products/completed operations, independent contractor, contractual liability, advertising injury, and personal injury liability with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate limit.
- B. Automobile Liability with combined single limits for Bodily Injury and Property Damage of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- C. Workers' Compensation Insurance with the limits established and required by the State of California.

D. Employer's Liability with limits of \$250,000 per occurrence.

"Occurrence," as used herein, means any event or related exposure to conditions which result in bodily injury or property damage.

Within 10 days after receiving Notice of Award, the Contractor will furnish an endorsement to the Contract & Compliance Administrator showing the required insurance coverages for the Contractor and further providing that:

1. The Authority and its Member Agencies, and their officers, directors, employees, and agents are named as an additional insured via endorsement on Commercial General Liability and Automobile Liability insurance with respect to performance hereunder.
2. The coverage will be primary and noncontributory as to any other insurance with respect to liability hereunder.
3. Thirty days prior written notice of cancellation or of material change in coverage will be given to the Authority by endorsement.

Any deductibles or self-insured retentions (SIR) must be declared to and approved in writing by the Authority. If the Authority agrees in writing to a deductible or self-insured retention, then in the event of any claims or suits which may arise for which the Authority seeks coverage under such policy as an additional insured, proposer will satisfy such deductible or self-insured retention to the extent of any loss covered by such policy arising from or connected with any alleged act or omission of proposer, its officers, directors, employees, agents, Subcontractors, or suppliers, even if proposer is not a named defendant in the lawsuit. Proposer's policies will neither obligate nor prohibit the Authority or any Additional Insured, from paying any portion of any proposer deductible or SIR.

As an alternative to one or more insurance coverage required by this Contract, the Authority may accept a program of self-insurance which is maintained by Contractor in the ordinary course of its operations, not specific to this Contract, and fully compliant with California law.

13. INDEMNITY

The Contractor will indemnify, defend and hold harmless the Authority, and its member agencies, and their officers, directors, employees and agents from and against any and all liability, expense (including but not limited to reasonable defense costs and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever for bodily injury, death, personal injury or property damage (including property of the Contractor) arising from or connected with any alleged act and/or omission of the Contractor, its officers, directors, employees, agents, subcontractors or suppliers. This indemnity will survive termination of this Contract and/or final payment thereunder. The Contractor has no obligation to indemnify the Authority from any claims resulting solely from acts or omissions of the Authority.

Notwithstanding anything contained or stated elsewhere, the Contractor shall have no obligation or liability, including any obligation to indemnify or defend any Indemnified

Party, (a) for a failure to prevent any crime to tortious act, (b) for any injury, loss or damage caused directly by a criminal or tortious act of anyone other than the Contractor, its officers, directors, employees, agents, sub-contractors or suppliers while providing services under this Contract, or (c) for any injury, loss or damage caused by any means whatsoever except as the result of a failure by the Contractor, its officers, directors, employees, agents, sub-contractors, or suppliers to perform the Services under this Contract.

The parties acknowledge and agree that Attachment A, Scope of Services, provides a general description of the law enforcement services to be provided under this Contract. The Authority understands and agrees that the law enforcement services provided hereunder are not intended or expected to accomplish patrolling or law enforcement at any particular location, more than a few times a day or less, or to prevent crime or wrongdoing from occurring at any particular place or time. The Contractor shall have no obligation to patrol or provide law enforcement at any specific location at any particular time(s) except under a written schedule provided in advance by the Authority and agreed to by the Contractor.

Notwithstanding anything contained herein, the Contractor's obligations hereunder to the Authority or any Indemnified Party shall be limited by any Immunity or freedom from suit or liability provided by law, including but not limited to those stated in California Government Code section 818.2 and 845, as if such immunity or legal provisions were incorporated in full in this Contract and made applicable to the Authority and all Indemnified Parties.

Any obligation by Contractor or Authority to provide defense or indemnity hereunder shall not arise until it has been finally determined by competent judicial authority that such indemnity is owed under the provisions of this Section. The procedure in Section 18, Dispute Resolution and Submittal of Claims by Contractor, shall not apply to the final determination in the first sentence of this subparagraph.

The Authority shall indemnify, defend and hold harmless the Contractor, and its officers, directors, employees and agents from and against any and all liability, expense (including, but not limited to reasonable defense costs and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury or property damage (including property of the Authority) arising from or connected with any alleged act and/or omission of the Authority, its officers, directors, employees, agents, sub-contractors or suppliers.

It is the intent of the parties of this Contract that nothing herein shall impose, nor shall be interpreted to impose, on the Contractor any liability for injuries or death to any Contractor employee greater than the liability imposed pursuant to the provisions of the worker's compensation laws.

This Section 13, Indemnity, shall not be subject to Section 18, Dispute Resolution and Submittal of Claims by Contractor, of this Contract.

This Section 13, Indemnity, shall survive termination to this Contract and/or final payment thereunder.

14. REVISIONS IN SCOPE OF SERVICE

By written notice or order, the Authority may, from time to time, request changes to this Contract. Within a reasonable time after such notice or order, and after agreement upon any additional compensation that may be required to provide additional services generated by the requested changes, as well as with approval by the San Bernardino County Board of Supervisors, changes in the Services will be mutually agreed to and incorporated into an amendment to this Contract. Upon execution of an amendment, the Contractor will perform the Services, as amended.

15. RIGHTS IN TECHNICAL DATA

All press releases or information released by Contractor concerning the Services that might appear in any publication or dissemination, including but not limited to newspapers, magazines, radio, television, and other electronic media outlets, will be coordinated with the Authority.

Except for the Contractor's work papers, which will remain the exclusive property of the Contractor, all final reports and completed deliverables (which may include: letters, documents, reports and other products and data produced under this Contract) and delivered to the Authority ("Deliverables"), will become the property of the Authority without restriction or limitation on their use, provided such use is in accordance with this Contract. The Contractor will be permitted to retain copies of such items for the furtherance of its technical proficiency and when disclosure is required by law or legal process.

16. OWNERSHIP OF REPORTS AND DOCUMENTS

The originals of all letters, documents, reports and other products and data contemplated to be produced under this Agreement will become the property of the Authority without restriction or limitation on their use and will be made available upon request to the Authority at any time. Original copies of Deliverables will be delivered to the Authority upon completion of the work or termination of the work. The Contractor will be permitted to retain copies of such items without restriction or limitation on their use.

17. DEBARMENT AND SUSPENSION CERTIFICATION

The Contractor, under penalty of perjury, certifies that, except as notes below, any person associated therewith in the capacity of director, officer or manager:

- a. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- b. Has not been suspended, debarred voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
- c. Does not have a proposed debarment pending; and

- d. Has been indicated, convicted, or had a civil judgement rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

18. DISPUTE RESOLUTION AND SUBMITTAL OF CLAIMS BY CONTRACTOR

Prior to the filing of a claim or the commencement of any legal action, the parties agree to discuss and attempt to resolve, in good faith, any dispute or claim arising out of or relating to the Contract or the services provided thereunder. If, after good faith efforts, the parties are unable to resolve their dispute within 30 days, or as agreed to by both parties, then the parties are free to pursue all other legal and equitable remedies available to them. Nothing herein will preclude the Contractor from filing a formal claim in accordance with applicable California law provided, however, that the Contractor will, if permitted, seek a tolling of any filing requirements during the pendency of any good faith discussions.

The Contractor will file all claims with the Authority's Project Manager in writing within 30 days of the event or occurrence giving rise to the claim. The claim will be in sufficient detail to enable the Authority to ascertain the claim's basis and amount, and will describe the date, place and other pertinent circumstances of the event or occurrence giving rise to the claim and the indebtedness, obligation, injury, loss or damages allegedly incurred by the Contractor.

Even though a claim may be filed and/or in review by the Authority, the Contractor will continue to perform in accordance with this Contract.

19. EQUAL OPPORTUNITY

The Contractor will not discriminate against, or grant preferential treatment to, any individual or group, or any employee or applicant for employment because of race, age, religion, color, ethnicity, sex, national origin, ancestry, physical handicap, mental condition, political affiliation, sexual orientation or marital status. The Contractor will take action to ensure that applicants and employees are treated without regard to the above.

20. STANDARD OF PERFORMANCE

The Contractor will perform and exercise due professional care and competence in the performance of the Services in accordance with the requirements of this Contract. The Contractor will be responsible for the professional quality, technical accuracy, completeness and coordination of the Services, it being understood that the Authority will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Services. The foregoing obligations and standards will constitute the "Standard of Performance" for purposes of this Contract. The provisions of this paragraph will survive termination or expiration of this Contract and/or final payment thereunder.

All workers will have sufficient skill and experience to perform the Services assigned to them. The standards of performance, methods of performance, discipline of officers, control of personnel, advancement in compensation of personnel, determination of proper law enforcement practices and procedures, and all other matters incidental to the manner

of performance of services by Contractor hereunder shall be determined at the Contractor's reasonable discretion and consistent with applicable statutes and policies. The responsibility of the Contractor, and of County, to Authority hereunder shall be to provide, as an independent contracting agency, the services herein contracted, and Authority shall not have the right to determine or direct the manner or means of performance. The Authority will have the right, at its sole discretion, to request the removal of the Contractor's personnel at any level assigned to the performance of the Services at no additional fee or cost to the Authority, if the Authority considers such removal in its best interests and requests such removal in writing and such request is not done for illegal or improper reasons. Contractor agrees to give due consideration to such Authority request, including meeting with command staff at the Authority's request. Further, an employee who is removed from performing Services under this Contract under this Article will not be re-assigned to perform Services under this Contract without the Authority's prior written authorization.

Recognizing the importance of both actual and apparent independence of the Contractor, nothing in this Contract is intended to impinge the independence of the Contractor. Should a situation arise through the performance of the services required by this Contract that the Contractor determines may create an actual or apparent lack of independence of the Contractor, the Authority expects the Contractor to bring it to the attention of the appropriate level of the Authority. The Authority and the Contractor will mutually develop a resolution of the situation that is satisfactory to both parties.

21. NOTIFICATION OF EMPLOYMENT OF SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY BOARD MEMBERS/ALTERNATES AND EMPLOYEES

To ensure compliance with the Authority's Ethics Policy, the Contractor will provide written notice to the Authority disclosing the identity of any individual who the San Bernardino County Sheriff's Department desires to employ or retain under a contract, and who (1) presently serves as a Board Member/Alternate or an employee of the Authority, or (2) served as a Board Member/Alternate or an employee of the Authority within the previous 12 months of the date of the proposed employment or retention by the Contractor to perform services under this Contract. The Contractor's written notice will indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of the Contract.

22. DISQUALIFYING POLITICAL CONTRIBUTIONS

In the event of a proposed amendment to this Contract, the Contractor will provide a written statement disclosing any contribution(s) of \$250 or more to any Board Member/Alternate made by the Contractor within the preceding twelve months of the date of the proposed amendment. Applicable contributions include those made by any agent/person/entity on behalf of the Contractor.

23. COMPLIANCE WITH LAW

The Contractor will familiarize itself with and perform the Services required under this Contract in conformity with applicable requirements and standards of the Authority, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and services may be affected by Services under this Contract.

The Contractor will also comply with all applicable Federal, California and local laws and ordinances.

24. COMPLIANCE WITH LOBBYING POLICIES

NOT USED

25. PUBLIC RECORDS ACT

All records, documents, drawings, plans, specifications and other material relating to conduct of the Authority's business, including materials submitted by the Contractor in its proposal and during the course of performing the Services under this Contract, will become the exclusive property of the Authority and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. The Authority's use and disclosure of its records are governed by this Act.

The Authority will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. The Authority will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by the Contractor. The Authority will endeavor to notify the Contractor of any request of the disclosure of such materials. Under no circumstances, however, will the Authority be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistakes or negligence on the part of the Authority or its officers, employees and/or the contractors.

In the event of litigation concerning the disclosure of any material submitted by the Contractor, the Authority's sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. The Contractor, at its sole expense and risk, will be responsible for prosecuting or defending any action concerning the materials, and will defend, indemnify and hold the Authority harmless from all costs and expenses, including reasonable attorneys' fees, in connection with such action.

26. WAIVER/INVALIDITY

No waiver of a breach of any provision of this Contract by either party will constitute a waiver of any other breach of the provision, or of any other breach of the provision of the Contract. Failure of either party to enforce any provision of this Contract at any time will not be construed as a waiver of that provision.

The invalidity in whole or in part of any provision of this Contract will not void or affect the validity of any other provision.

27. FORCE MAJEURE

Performance of each and all the Contractor's and the Authority's covenants herein will be subject to such delays as may occur without the Contractor's or the Authority's fault from

acts of God, strikes, riots, or from other similar causes beyond the Contractor's or the Authority's control. Any failure by Contractor to provide scheduled services due to a force majeure event shall not be considered a breach of this Agreement by Contractor.

28. GOVERNING LAW

The validity of this Contract and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California.

29. NOT USED

30. NOT USED

31. FEDERAL FUNDING LIMITATION

NOT USED

32. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

- A.** The Contractor acknowledges and agrees 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 the Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Contractor agrees to include the above clause in each subcontract directly related to the services under this Agreement and financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

33. CHANGES TO EXISTING LAWS

In the event local, State or federal laws or regulations that were not announced or enacted at the time of the Contract award are enacted before performance of the Work and such laws or regulations make standards more stringent or compliance more costly under this Contract, the Contractor shall notify Authority in writing of such laws or regulations and their effects on the pricing or delivery schedule promptly after the Contractor first becomes aware of the laws and regulations and prior to incurring any such expenses.

The Authority will make a determination as to whether the Contractor should be reimbursed for any such expenses or any time extensions should be granted.

The Contractor shall be deemed to have had notice of any federal law or regulation announced or enacted at the time of contract award, even though such law or regulation did not take effect or become operative until some date after the Contract award.

The Contractor shall, immediately upon becoming aware of any such imposition or change of requirement, provide the Authority with full and detailed particulars of the changes required in the Work and of cost involved therein, or shall be deemed to have waived any rights under this Article. In the event any governmental requirements are removed, relaxed, or changed in any way after the date of contract award so as to make the Contractor's performance less expensive, or less difficult, then the Authority shall have the option either to require the Contractor to perform pursuant to the more rigorous requirements or to receive a reduction in the price of the Work affected for all savings in direct costs which may be realized by the Contractor by reason of such change and appropriate adjustments in deductions for overhead and profit made so as to reflect actual savings made by the Contractor. The Authority shall give the Contractor notice of the Authority's determination, and anticipated savings.

34. INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS

No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this Contract or to any economic benefit arising therefrom.

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

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies 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 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.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance 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.

- B. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

36. FEDERAL LOBBYING RESTRICTIONS

Contractor represents that it has not and shall not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. §1352. Each and every Subcontractor at all tiers also certified to the tier above that it will not and has not used federal appropriated funds for such purpose. Each Contractor and Subcontractor at all tiers also disclosed the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. §1352. Such disclosures are forwarded from tier to tier up to the Authority.

The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Contract; or
- (2) A change in the person(s) influencing or attempting to influence this federally funded Contract; or
- (3) A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Contract.

37. ENERGY CONSERVATION REQUIREMENTS

Contractor shall recognize 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 (42 U.S.C. §6321 et seq.).

38. CLEAN WATER REQUIREMENTS

NOT USED

39. CLEAN AIR

NOT USED

40. REQUIREMENTS OF AMERICANS WITH DISABILITIES ACT

In the performance of this Contract, the Contractor is also required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

- a. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37.
- b. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27.
- c. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local federal government Services," 28 CFR Part 35.
- d. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36.
- e. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19.
- f. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630.
- g. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F.
- h. Any implementing requirements that the U.S. DOT may issue and which SCRRRA provides to Contractor.

41. CIVIL RIGHTS REQUIREMENTS

The following requirements apply to this Contract:

- A. 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, the Contractor 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, the Contractor agrees to comply with applicable Federal implementing regulations. and other implementing requirements FHWA may issue, provided the Authority provides them to the Contractor in writing.
- B. Equal Employment Opportunity:
 - (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 opportunity requirements of the U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 CFR 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 activities undertaken in the course of the Contract. The Contractor 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 other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue, provided the Authority provides them to the Contractor in writing.

- (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, the Contractor agrees to refrain from discrimination against present and prospective employees for reasons of age. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue, provided the Authority provides them to the Contractor in writing.
- (c) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue, provided the Authority provides them to the Contractor in writing.

42. PROMPT PAY CLAUSE

The Authority has adopted a prompt payment provision on all U.S. DOT-assisted contracts to facilitate timely payment to all subcontractors in accordance with regulatory mandates. Pursuant to 49 CFR Part 26.29, The Authority will include the following clause in each U.S. DOT-assisted contract:

"Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the Contractor receives from the Authority. The Contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the Agreement work by the Authority. Any delay or postponement of payment from the above referenced time frame may take place only for good cause and with the Authority's prior written approval."

The Contractor shall incorporate this clause verbatim, set forth above, in all subcontract, broker, dealer, vendor, supplier, purchase order or other source agreements issued to both DBE and non-DBE entities.

Any violation of the provisions listed above shall subject the violating 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 noncompliance by a subcontractor.

Failure to comply with this provision without prior approval from the Authority will constitute noncompliance, which may result in the application of appropriate administrative sanctions, including, but not limited to, a penalty of two percent (2%) of the invoice amount due per month, for every month that full payment is not made.

43. DISADVANTAGED BUSINESS ENTERPRISE

The Authority has established a 0% DBE contract-specific goal on this project.

If the Contractor has committed to utilize one or more DBE entities in the performance of this U.S. DOT-assisted contract, the Contractor shall comply with all the requirements set forth in Exhibit A entitled, "DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS FOR THE U.S. DOT-ASSISTED CONTRACTS," which is attached to, and incorporated herein by reference to this Agreement.

44. PREFERENCE FOR RECYCLED PRODUCTS

To the extent practicable and economically feasible, the Contractor agrees to provide a competitive preference for recycled products to be used in the work pursuant to the U.S. Environmental Protection Agency Guidelines at 40 CFR Part 247-253, implementing Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6962.

The Contractor should use both sides of paper sheets for copying and printing where practicable.

45. PRIVACY

- A. Should the Contractor, or any of its Subcontractors, or their employees administer any system of records on behalf of the federal government, the Privacy Act of 1974, 5 USC §552a, imposes information restrictions on the party administering the system of records.
- B. For purposes of the Privacy Act, when the Contract includes the operation of a system of records on individuals to accomplish a government function, Authority and any Contractors, third-party Contractors, Subcontractors, and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved. Failure to comply with the terms of the Privacy Act or this provision of this contract will make this contract subject to termination.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract that require the design, development, or operation of a system of records on individuals subject to the Privacy Act.

46. CONFIDENTIALITY

The Contractor agrees that during entire term of this Contract and until destroyed in compliance with the Contractor's ordinary business practice and applicable law, any information, data, figures, records, findings and the like received or generated by the Contractor in the performance of this Contract, will be considered and kept as private and privileged records and will not be divulged to any person, entity, corporation, or other entity except (1) with the written consent of the Authority or (2) in response to a good faith legal requirement after reasonable notice to the Authority. This section shall not inhibit Contractor from complying with the California Public Records Act, Cal. Gov. Code section 6250 et seq. or similar statute or requirement.

47. CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC

In interacting with the media and the public, the Contractor will follow provisions of Section 16 of this Agreement and will ensure that (1) all published information is factual, and that (2) it does not in any way imply that the Authority endorses the Contractor's agency, service, and/or product.

If the Contractor receives a complaint from a citizen or the community regarding the Services provided by its employees under this Contract, the Contractor will inform the Authority as soon as possible and inform the Authority of any action taken to address the situation but shall not be obligated to disclose confidential Peace Officer personnel records and related information, to the extent required to comply with applicable law.

The provisions of this Article will survive the termination or expiration of this Contract.

48. GOVERNING LAW AND VENUE

The validity of this Contract and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, will be governed by the laws of the State of California and the proper venue of any action brought hereunder is and will be San Bernardino County, California.

The Contractor will comply with all applicable federal, state and local laws and ordinances.

49. MODIFICATIONS TO CONTRACT

Unless specified otherwise in the Contract, this Contract may only be modified by written mutual consent evidenced by signatures of representatives authorized to enter into and modify the Contract. In order to be effective, amendments may require prior approval by the Authority's Board of Directors and San Bernardino County Board of Supervisors, and in all instances require prior signature of an authorized representative of the Authority and Contractor.

50. CONFLICT OF INTEREST

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the Authority. Contractor shall make a reasonable effort to prevent employees, Authority, or members of governing bodies from using their positions for purposes that are, or give the appearance of, being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the Authority determines a conflict-of-interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the Authority and such conflict may constitute grounds for termination of the Agreement. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

51. PRECEDENCE

Not Used.

52. ENTIRE CONTRACT

This Contract, and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire Contract between the Authority and the Contractor and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written.

53. ELECTRONIC SIGNATURES

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on the date shown below, and effective on the date first hereinabove written.

SAN BERNARDINO COUNTY

SOUTHERN CALIFORNIA
REGIONAL RAIL AUTHORITY



Dawn Rowe
Chair, Board of Supervisors

Darren M. Kettle Digitally signed by Darren M. Kettle
Date: 2023.03.10 14:23:40 -08'00'

Darren Kettle
Chief Executive Officer

MAR 14 2023

Date

95-6002748

Tax I.D. No.

APPROVED AS TO FORM:

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD
LYNNA MONELL
Clerk of the Board of Supervisors
of the County of San Bernardino

By

Deputy

By Don O. Del Rio Digitally signed by Don O. Del Rio
Date: 2023.03.10 13:12:08 -08'00'

Don O. Del Rio
General Counsel

APPROVED AS TO FORM:

By 
Tom Bunton
County Counsel

EXHIBIT A

DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS FOR U.S. DOT-ASSISTED CONTRACTS

The Authority's DBE objectives have been included in Exhibit A of this contract, and substantiated in its DBE Program Manual.

In the event of any conflicts or inconsistencies between the enforcement of this project and the U.S. DOT's DBE Program, with respect to U.S. DOT-assisted contracts, the U.S. DOT's DBE Program and its regulations shall prevail.

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Southern California Regional Rail Authority (Authority) has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs".

This U.S. DOT-assisted project is subject to these stipulated regulations and the Authority's DBE program, which are hereby incorporated in their entirety by this reference. It is the Contractor's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26 and the Authority's DBE program.

In order to ensure that the Authority achieves its overall DBE Program goals and objectives, the Authority encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, the Authority's policy objectives are to:

1. Ensure non-discrimination in the award and administration of all the Authority's DOT-assisted contracts and subcontracts;
2. Create a level playing field by which DBEs can compete fairly for and perform on the Authority's DOT-assisted contracts;
3. Ensure the Authority's DBE Program meets legal standards for unique and narrow program tailoring;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Assist in the removal of procurement and contracting barriers which may inadvertently impede DBE participation;
6. Offer assistance to firms to enable them to compete successfully in the market place outside of the DBE Program;
7. Provide training and other assistance through our resource partners to address capital, bonding, and insurance needs;
8. Comply with federal regulations and financial assistance agreements;

9. Disseminate timely and accurate information regarding Authority's contracting opportunities to DBE Program participants and potential participants; and
10. Establish and provide opportunities for DBEs by providing flexibility in the implementation of the Authority's DBE Program;
11. Monitor and enforce contractor compliance with meeting established DBE goals and/or exercising Good Faith Efforts to do so as defined in 49 CFR 26.

The Contractor must not discriminate on the basis of race, color, national origin, or sex in the award and performance of this Contract.

Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, must have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the Authority's DBE Program with respect to DOT-assisted contracts, the Regulations must prevail.

1.1 DBE Goal

The Authority shall establish contract-specific DBE goals to meet any portion of the overall DBE goal that the Authority does not project being able to meet using race-neutral means. The Authority will establish contract-specific goals only on those DOT-assisted contracts that have subcontracting opportunities.

The Authority may establish a DBE contract goal that is higher or lower than its overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract.

The Authority has established a 0% DBE contract-specific goal on this project. If the Contractor/Vendor's has committed to utilize a DBE in the performance of this U.S. DOT-assisted contract, the Contractor/Vendor's "Race-Neutral DBE Participation Commitment Form," in combination with the executed subcontract and/or purchase order will be utilized to monitor the Contractor/Vendor's DBE commitment.

Unless otherwise directed and/or approved by the Authority prior, the Contractor/Vendor must not effectuate any changes to its DBE participation commitment. The Contractor/Vendor must complete and submit all required DBE documentation to effectively capture DBE utilization on the Authority's U.S. DOT-assisted contracts whether achieved race neutrally or race consciously. No changes to the Contractor/Vendor's DBE commitment shall be made until proper review and approval by the Authority is rendered in writing.

The Contractor/Vendor must apply and report its DBE goal commitment against the total current Contract value, including any change orders and/or amendments.

1.2 DBE CERTIFICATION AND ELIGIBILITY

1. The Authority requires all DBEs listed for participation to be DBE certified by a California Unified Certification Program (CUCP) certifying member agency. The Authority is a non-certifying member agency of the CUCP. Therefore, the Authority will accept DBE certifications from member agencies which certify the eligibility of DBEs in accordance

with 49 CFR Part 26.81, under the CUCP. Listings of DBEs certified by the CUCP are available at <https://caltrans.dbesystem.com/>

2. It is the responsibility of the Contractor to verify the DBE certification status of all listed DBEs prior to listing the firm as a DBE participant.
3. A DBE must be a small business firm defined pursuant to 13 CFR Part 121 and be certified through the California Unified Certification Program ("CUCP") at the time of proposal submission. A listing of DBEs certified by the CUCP is available on the CUCP web site, which can be accessed at <https://caltrans.dbesystem.com/>
4. It is also the responsibility of the Contractor/Vendor to ensure that each DBE is certified in the NAICS code that corresponds to the DBE's contract scope of work. The Authority's evaluation of the "Race-Neutral Disadvantaged Business Enterprise (DBE) Participation Listing" form requires DBEs to be certified for the scope listed in accordance with the regulatory requirements.
5. A DBE may participate as a Contractor/Vendor, subcontractor, joint venture partner with a prime, vendor of material or supplies, or trucking company.
6. A DBE must perform a commercially useful function in accordance with 49 CFR Part 26.55 (i.e. must be responsible for the execution of a distinct element of the work, and must carry out its responsibility by actually performing, managing, and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.
7. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

1.3 DBE CREDITING PROVISIONS

Credit for DBE participation is determined according to the following provisions:

1. When a DBE is proposed to participate in the Contract, either as a Contractor/Vendor or subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted toward DBE participation.
2. If the Contractor/Vendor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted.
3. If a DBE intends to subcontract part of the work of its subcontract to a lower tier subcontractor, the value of the subcontracted work may be counted toward DBE participation only if the DBE subcontractor is a certified DBE and actually performs the work with its own forces. Services subcontracted to a non-DBE firm may not be credited toward the Contractor/Vendor's DBE attainment.
4. The Contractor/Vendor is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward DBE attainment, as follows:
 - (i) Sixty percent (60%) of expenditure(s) for equipment, materials, and supplies required under the Contract, obtained from a regular dealer; or
 - (ii) One hundred percent (100%) of expenditure(s) for equipment, materials, and supplies required under the Contract, obtained from a DBE manufacturer.

5. The following types of fees or commissions paid to DBE subcontractors, brokers, and packagers may be credited toward DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:
 - (i) Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
 - (ii) Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
 - (iii) Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.
2. Contractor/Vendor may count the participation of DBE trucking companies toward DBE attainment, as follows:
 - (i) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Contract.
 - (ii) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.
 - (iii) The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
 - (iv) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
 - (v) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - (vi) For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
3. If the Contractor/Vendor listed a non-certified DBE 1st tier subcontractor to perform work on this Contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower-tier DBE certified subcontractor or Vendor, the value of work performed by the lower-tier DBE firm's own forces can be counted toward DBE participation on the Contract.
4. The Contractor/Vendor is advised not to count the participation of DBEs toward the Contractor/Vendor's DBE attainment until the amount being claimed has been paid to the DBE.

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

1.4 DBE "FRAUDS" AND "FRONTS"

Only legitimate DBEs are eligible to participate in federally funded contracts. Therefore, Contractor/Vendor are cautioned against knowingly and willfully using "fronts" to meet DBE goals. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of Federal funds should be immediately reported to the Office of Inspector General (OIG), U.S. Department of Transportation, via the online hotline at <https://www.oig.dot.gov/hotline>, toll-free hotline at 800-424-9071, email at hotline@oig.dot.gov, or U.S. mail at DOT Inspector General, 1200 New Jersey Ave SE, West Bldg. 7th Floor, Washington, DC 20590. The hotline is open 24 hours per day, seven days per week. Additional information can be found on www.oig.dot.gov/hotline.

1.5 PROMPT PAYMENT TO SUBCONTRACTORS

In accordance with 49 CFR §26.29, the Authority established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than seven days from the prime contractor's receipt of each payment from the Authority. The Authority ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30-days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the Authority has selected the following method to comply with this requirement:

The Authority may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30- days after the subcontractor's work is satisfactorily completed.

Upon the Authority's request, the Contractor/Vendor shall provide evidence that the Contractor/Vendor *has* paid Subcontractors all amounts due in accordance with this section. This section applies to both DBE and non-DBE Subcontractors.

1.6 CONTRACTOR/VENDOR'S ASSURANCE CLAUSE REGARDING NON-DISCRIMINATION

I. ASSURANCES AND REQUIRED CONTRACT PROVISIONS

A. Non-Discrimination Assurances (§26.13(a))

"The Authority shall not discriminate on the basis of race, color, national origin or gender in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The Authority shall take all

necessary and reasonable steps under Part 26 to ensure non-discrimination in the award and administration of U.S. DOT- assisted contracts. The Authority's DBE Program, as required by Part 26 and as approved by the U.S. DOT, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Authority of its failure to carry out its approved Program, the Authority may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

B. Contractor's Assurance Clause (49 CFR §26.13b)

The Authority shall ensure that the following language and/or procedures are included in all agreements with subcontractors under this contract:

"The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate."

****Please note the language in Sections A and B above is to be used verbatim.****

1.7 ON-GOING REPORTING REQUIREMENTS AND SUBMISSION OF DBE INFORMATION (POST-AWARD)

The Contractor/Vendor must complete and submit the following forms and/or documentation:

- (1) "Monthly DBE Commitment and Attainment Summary and Subcontractor Prompt Pay Verification Report"

This report serves to monitor prompt payment to both DBE and non-DBE firms, and collect DBE utilization data as required under 49 CFR, Part 26.

If there is a DBE goal on the contract or a DBE firm has been listed by the Contractor/Vendor, the Contractor/Vendor must complete and submit this report, electronically through the Authority's electronic reporting system by the 15th of each month until completion of the Contract. Contractor/Vendor must submit the first report following the first month of Contract activity. Even if no DBE participation or payments will be reported within a period, Contractor/Vendor must complete and submit the report monthly.

If there is not a DBE goal and no DBE commitment has been made has been listed by the Contractor/Vendor, the Contractor/Vendor must complete and submit this report, electronically through the Authority's electronic reporting system bi-annually on April 15th and October 15th of each year. Additionally, upon completion of the contract, a final report must be submitted and marked final.

The Monthly DBE Commitment and Attainment Summary and Subcontractor Prompt Pay Verification Report must include the amount(s) received by the Contractor/Vendor from the Authority and the amount(s) paid to lower-tier subcontractors during the Month.

- (2) Contractor/Vendor Prompt Pay Verification Summary

The Monthly DBE Commitment and Attainment Summary and Subcontractor Prompt Pay Verification Report process requires the Contractor/Vendor to submit pertinent payment details for any firm (DBE and Non-DBE) that they have reported a payment to within the reporting period. Contractor/Vendor is advised not to report the participation of DBE(s) toward the Contractor/Vendor's DBE attainment until the amount being claimed has been paid to the DBE.

Pertinent payment details include:

- a) Invoice Number
- b) Invoice Amount
- c) Payment Amount
- d) Invoice Date
- e) Check Number
- f) Date of Payment
- g) Corresponding Prime Invoice (associated to Subcontractor's invoice)
- h) Retention
- i) Disputed or Withheld invoice amounts
- j) Task Order/JOC Number payment was made for (as applicable)

Firms will receive a notification from the Authority's electronic reporting system when a payment is reported to them and they will be required to log-in to the system to verify the payment information provided by Contractor/Vendor. All payments to lower-tier firms must be validated prior to the 15th of each month following the reporting period. A reported payment to a lower-tier DBE firm will not be credited until the DBE firm has validated the payment through the Authority's electronic system.

Electronic submission of the Monthly DBE Commitment and Attainment Summary and Subcontractor Prompt Pay Verification Report is a certification under penalty of perjury of the prompt payment assurance statement of compliance, providing assurance that timely payments have been issued to all vendors in accordance with regulatory mandates and as required by 49 CFR Part 26.29.

(3) "Monthly DBE Trucking Verification"

If the Contractor/Vendor is crediting DBE trucking participation towards the DBE goal, Contractor/Vendor must submit a trucking verification report to the Authority through the Authority's electronic reporting system, prior to the 15th of each month. This form will be included within the Monthly DBE Commitment and Attainment Summary and Vendor Prompt Pay Verification Report process when the Contractor/Vendor reports a payment to a DBE trucking firm. Pertinent reporting details will include:

- a) Truck number
- b) Owner's name

- c) California Highway Patrol CA number
- d) DBE certification number of the owner (as applicable)
- e) Amount paid
- f) Fee/Commission amount

As a part of this process, Contractor/Vendor must also obtain and submit documentation to Authority showing the amount paid by DBE trucking companies to all firms, including owner operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, Contractor/Vendor may count only the fee or commission the DBE receives as a result of the lease arrangement.

(4) DBE Subcontractor Agreements

The Contractor/Vendor must electronically submit to the Authority copies of executed subcontracts and/or purchase orders (PO) for all DBE firms participating on the contract within ten (10) working days of award. The Contractor/Vendor must immediately notify the Authority in writing; of any problems it may have in obtaining the subcontract agreements from listed DBE firms within the specified time.

Failure to submit any of the required submittals above and their support documentation within the specified timeline shall result in a penalty of ten dollars (\$10) per day, per submittal document.

Authority requires Contractor/Vendor to maintain records and documents of payments to lower-tiers, including DBEs, for a period of three (3) years from the date of final payment by Authority, unless otherwise provided by applicable record retention requirements for Contractor/Vendor's agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of Authority. This reporting requirement extends to all lower-tiers, both DBE and non-DBE.

Authority reserves the right, at its sole discretion, to demonstrate responsiveness to requirements of CFR 49 Part 26.37 by implementing the following method(s):

- a) Posting Contractor/Vendor payment data to a website, database, or other place accessible to Subcontractors to assist them in determining when they should expect to receive payment.

(5) DBE Commitment Change Request(s), DBE Substitution, Termination and Increasing or Decreasing Commitment Values

Authority requires that Contractor/Vendor not terminate a DBE without Authority's prior written consent. This includes, but is not limited to, instances in which Contractor/Vendor seeks to perform work originally designated for a DBE with its own work force or those of an affiliate, a non-DBE firm, or with another DBE firm.

Authority will provide such written consent only if it agrees, for reasons stated in the concurrence document, that Contractor/Vendor has good cause to terminate the DBE firm. For purposes of this section, good cause includes the following circumstances:

- A. The listed DBE subcontractor fails or refuses to execute a written contract.
- B. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist

if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of Contractor/Vendor.

- C. The listed DBE subcontractor fails or refuses to meet Contractor/Vendor's reasonable, nondiscriminatory bond requirements.
- D. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- E. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 108, 215 and 1,200 or applicable state law.
- F. Contractor/Vendor has determined that the listed DBE subcontractor is not a responsible Contractor/Vendor.
- G. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal.
- H. The listed DBE is ineligible to receive DBE credit for the type of work required.
- I. A DBE owner dies or becomes disabled with the result that the listed DBE Contractor/Vendor is unable to complete its work on the contract.
- J. Other documented good cause that you determine compels the termination of the DBE. Provided, that good cause does not exist if Contractor/Vendor seeks to terminate a DBE it relied upon to obtain the Contract so that Contractor/Vendor can self-perform the work for which the DBE Contractor/Vendor was engaged or so that Contractor/Vendor can substitute another DBE or non-DBE Contractor/Vendor after Agreement award.

To submit a request to terminate and/or substitute a DBE subcontractor, the Contractor/Vendor will be required to submit a DBE Commitment Change Request through Authority's electronic system. The DBE Commitment Change Request includes options to increase, decrease, substitute or terminate a DBE commitment.

If decrease, substitute or terminate is selected, Contractor/Vendor must give notice in writing to the DBE, with a copy to Authority, of its intent to decrease, substitute and/or terminate, and the reason for the request. This documentation will be required by the Authority's electronic system when submitting the DBE Commitment Change Request.

The Contractor/Vendor must give the DBE five (5) days to respond to Contractor/Vendor's notice and advise Authority and Contractor/Vendor of the reasons, if any, why it objects to the proposed termination of its subcontract or purchase order and why Authority should not approve Contractor/Vendor's action. If required in a particular case as a matter of public necessity (e.g. safety), Contractor/Vendor may provide a response period shorter than five (5) days.

In the event of an approved DBE substitution, termination, or failure of a DBE to complete its work on the contract for any reason, the DBE must be substituted with another DBE or adequate good faith efforts must be documented by Contractor/Vendor within five (5) days, to the extent needed to meet the contract-specific DBE goal. Note: The five (5) day period may be extended for an additional five (5) days if necessary, at the request of the Contractor/Vendor. The substitute DBE must be certified as a DBE at the time of request for substitution.

The Contractor/Vendor shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section and is approved by Authority. This includes partial terminations.

Should the Contractor/Vendor elect to submit a good faith effort documentation in lieu of proposing additional DBE participation, Authority will review the documentation and provide a determination through Authority's electronic system to Contractor/Vendor stating whether or not good faith efforts have been adequately demonstrated.

The substitute DBE cannot work on the Agreement until its work eligibility has been confirmed and required subcontracts, supplies, trucking commitments, or other services have been approved by Authority.

(6) Additional DBE Subcontractors

In the event Contractor/Vendor identifies additional DBE Subcontractors or suppliers not previously identified by Contractor/Vendor for DBE participation under the Agreement, Contractor/Vendor must notify Authority by submitting a "Request to Add," through the Authority's electronic system. This will enable Authority to verify the firm's eligibility, capacity, CUF and ensure there is not a scope conflict with another previously listed firm. Proposed firms will not be applied towards Contractor/Vendor's DBE participation until approved by Authority.

Contractor/Vendor must also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specific value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation). This supporting documentation will be required by the Authority's electronic system when submitting a Request to Add.

DBEs listed by the Contractor/Vendor in its "DBE Participation Commitment Form" submitted at time of proposal shall perform the work and supply the materials for which they are listed, unless the Contractor/Vendor has received prior written authorization from the Authority to perform the work with other forces or to obtain the materials from other sources.

The Contractor/Vendor shall provide written notification to the Authority in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

(7) Notification of Change in Circumstances

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor must notify the Contractor/Vendor in writing with the date of decertification. The Contractor/Vendor must furnish the written documentation to the Authority within ten (10) days of receipt.

(8) Record Retention Requirements

The Authority requires the Contractor/Vendor to maintain records and documents of payments to lower-tiers, including DBEs, for a period of three (3) years from the date of final payment by the Authority, unless otherwise provided by applicable record retention requirements for the Contractor/Vendor's agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of Authority. This reporting requirement extends to all lower-tiers, both DBE and non-DBE.

Failure to submit any of the required submittals above and their support documentation within the specified timeline shall result in a penalty of ten dollars (\$10) per day, per submittal document.

H. On-Going Good Faith Effort (GFE) Documentation

During the term of the contract, the Contractor/Vendor shall continue to make a Good Faith Effort (GFE) to ensure that DBEs have an opportunity to successfully perform in the contract, and that the Contractor/Vendor meets DBE commitments. These efforts shall include but shall not be limited to the following:

- a. Negotiating in good faith to attempt to finalize and execute a subcontract agreement with the DBEs committed to in the bid;
- c. Continuing to provide assistance to DBE subcontractors or suppliers in obtaining bonding, lines of credit, etc.
- d. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting Authority approval to substitute the DBE.
- e. Paying all vendors (DBEs and non-DBEs) in a timely manner, as listed in the contract specifications;
- f. Alerting the Authority in a timely manner of any problems anticipated in attaining the DBE participation committed to in the bid or proposal;
- g. If a DBE substitution is necessary, making a Good Faith Effort to replace the DBE with another DBE, subject to the approval of Authority.

1.8 **DISPUTE RESOLUTION PROVISION**

All U.S. DOT-assisted contracts shall contain provisions or conditions which will allow for dispute resolution remedies in instances where contractors/consultants violate or breach DBE Program requirements, inclusive but not limited to, prompt payment and provide for such sanctions and penalties as may be appropriate.

Contractors/Consultants shall incorporate this Section into each subcontract related to work arising under a U.S. DOT-assisted agreement and shall not incorporate by reference.

Contractor/Consultant and subcontractor/subconsultant agree to notify the Authority within five (5) business days of any prompt payment and/or DBE Program disputes which cannot be settled by discussions between the parties involved. Only when resolution of DBE disputes attempted through informal meetings, mediation, and/or arbitration has failed may the Contractor formally request substitution of a DBE subcontractor/subconsultant.

Contractor/Consultant and subcontractor/subconsultant further agree to proceed through informal meetings, mediation, arbitration, or any combination thereof as further detailed below. Dispute submittals shall include the method(s) of dispute resolution selected, terms, timeframes, and a detailed summary of assistance being requested (as applicable).

I. INFORMAL MEETINGS

The Authority is available to assist Contractor/Consultant with coordination of informal meeting requests to assist in the resolution of disputes between Contractor/Consultant and DBE subcontractor/subconsultant. The Authority's DBELO or a designated DBE support representative will conduct the informal meetings with parties in dispute. Representatives from Contractor/Consultant and subcontractor/subconsultant for the purpose of dispute resolution, must include individuals authorized to bind each interested party. All parties must agree to the procedure.

II. MEDIATION

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third-party organizations. The Authority's DBELO and designated support staff is considered an independent third party. Submission to informal mediation is voluntary; it is not binding and offers advisory opinions.

III. ARBITRATION

Should the parties fail to resolve any DBE related dispute arising out of or related to the contract via informal meetings or mediation, the parties are contractually obligated to submit the claims for arbitration within 120 days from date the Authority is notified of dispute. Arbitration conducted pursuant to the contract shall be binding upon all parties to the arbitration. All arbitration is to be conducted in a manner consistent with section 1020 et seq. of the Public Contract Code and Section 1296 of Code of Civil Procedure.

Local mediation and arbitration services that are available within the Authority's market area can be found at:

https://www.dca.ca.gov/consumers/mediation_programs.shtml

Arbitration findings are binding upon the parties. However, the findings do not in any way relieve the contractor of its obligation to meet the DBE goals. Should the parties proceed to arbitration, money due, if any, shall be placed in a trust account. Such funds shall be released to the appropriate party within five (5) working days of a determination being issued by the arbitrator.

1.9 **NON-COMPLIANCE AND ADMINISTRATIVE SANCTIONS**

A Contractor/Vendor determined to be non-compliant with DBE Program requirements may be subject to administrative sanctions as outlined below:

1. A non-compliant Contractor/Vendor may be notified by the DBELO or designee, that administrative remedies shall be imposed for failure to: (a) meet the Contractor/Vendor's DBE commitment by contract end, (b) submit documentation of Good Faith Efforts, (c) submit required DBE utilization reports, (d) submit verification of prompt payment to DBE subcontractors, and/or (e) comply with proper DBE termination procedures. The notice shall state the specific administrative remedies to be imposed.
2. The Contractor/Vendor shall be given ten (10) working days from the date of the notice to file a written appeal to the Authority's Executive Director. Failure to respond within the ten (10) day period shall constitute a waiver of appeal.

3. The Executive Director or his designee may schedule a hearing to gather additional facts and evidence and shall issue a final written determination on the matter within thirty (30) working days following receipt of the written appeal. The written decision of the Executive Director or designee is final and there is no further appeal.
4. Administrative remedies shall be determined by the DBELO and/or designee and may include, but will not be limited to:
 - a. Suspension of progress payments to the Contractor/Vendor or of any monies held by the Authority as retention on the contract until the Contractor/Vendor is brought into compliance; and/or
 - b. Termination of the contract in part or in whole.

ATTACHMENT A

SCOPE OF WORK

REDLANDS PASSENGER RAIL LAW ENFORCEMENT SERVICES

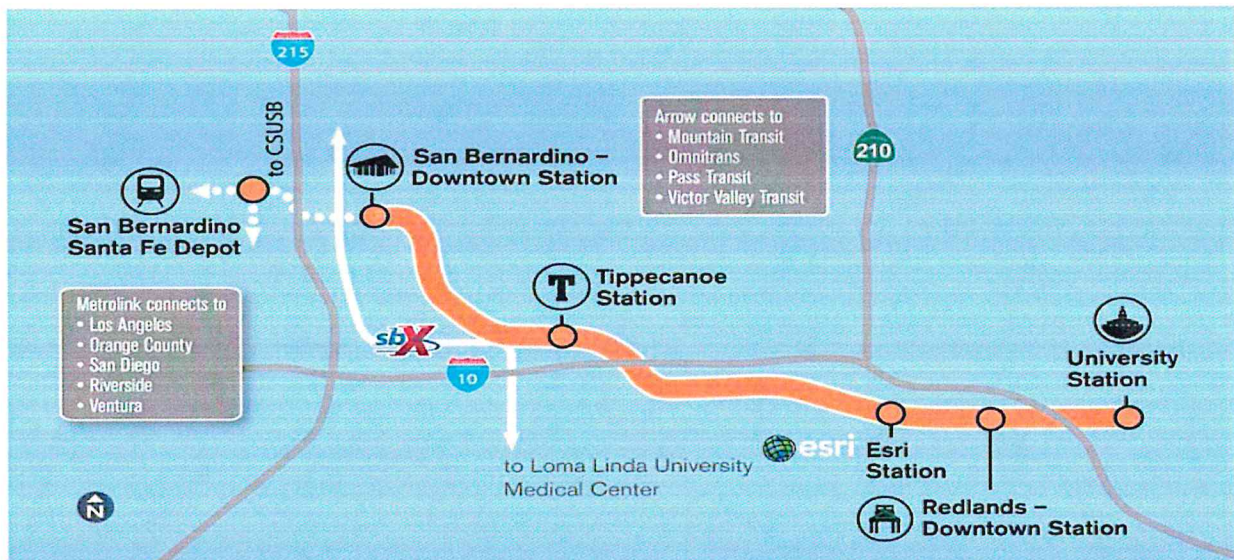
I. INTRODUCTION

Redlands Passenger Rail (RPR)- Arrow Service, is a nine-mile rail corridor extending along an existing railroad Right-of-Way (ROW) owned by San Bernardino Associated Governments General Assembly (SANBAG) east from the City of San Bernardino to the City of Redlands within the southwestern corner of the County of San Bernardino, California.

The RPR encompasses the following:

- Five stations:
 1. San Bernardino Transit Center: 140 S. E Street, San Bernardino
 2. Tippecanoe Station: 1498 S. Tippecanoe Avenue, San Bernardino
 3. Esri Station: 601 New York Street, Redlands
 4. Downtown Redlands Station: 351 North Orange Street, Redlands
 5. University Station at the University of Redlands: 1100 East Park Avenue, Redlands

Chart 1: Redlands Passenger Rail System Map



- During morning and afternoon peak commute hours (approximately 0700 to 0900 and 1600 to 1800), trains will operate twice per hour. During non-commute or off-peak hours, trains will operate once per hour. Weekday and weekend service are planned to start at 5 a.m. and run until 10 p.m.
- Trains per day: 25 Diesel Multiple Units (DMU) trains per day (50 trips) and 2 Metrolink trains per day (one morning, one evening, 4 trips).
- Ridership estimates are approximately 1600 passengers per day
- Redland Passenger Rail schedule: metrolinktrains.com/rider-info/arrow/?epsremainingpath=arrow-service

II. SCOPE OF WORK

Law enforcement agency shall provide a detail policing plan for the Redlands Passenger Rail. Specific personnel and vehicles are assigned at the sole discretion of the Contractor, who shall give due consideration to the needs of Authority. The policing plan shall address how your agency will ensure the safety of our passengers and employees by:

- Efficient deployment of law enforcement resources
- Adequate response time
- High visibility to deter and prevent crimes on the system and facilities
- Prevent and deter trespassing on Authority's right-of-way and grade crossings

A. BASE LAW ENFORCEMENT SERVICES

The contracted law enforcement agency will coordinate all local law enforcement efforts along the Redlands Passenger Rail. The agency will have jurisdictional responsibility for all on-board incidents.

An arrest made by Contractor's personnel while engaged in the performance of this Contract shall constitute an arrest by an officer employed by Authority, and not an arrest by County officer, within the meaning of California Penal Code section 1463 and any similar or related statute.

Law enforcement must provide equal coverage Monday-Sunday and must have the ability to provide the Authority the advantages of a full-service law enforcement agency.

Contracted services will be provided from the San Bernardino – Downtown Station through the Redlands University Station route during the Arrow service operating hours which are initially anticipated to be from 6:00 AM to 9:00 PM. Upon implementation of quiet zones, the above hours may be modified.

In specific incidents involving Authority equipment, any of the specialized resources could be called upon to expand Metrolink's law enforcement unit.

Other related services include the following:

1. Directly respond to all incidents aboard Redlands Passenger Rail requiring law enforcement presence or services.
2. As allowed by law, receive and file with the Authority the police and coroner reports for each strike that occurs on the Redlands Passenger Rail.
3. Investigate, follow-up, and prepare legal documents and case filings for Authority - related crimes including on-board incidents and those along the Authority ROW patrolled by other agencies.
4. Participate in rail safety, crime prevention, advocacy, and traffic safety programs.
5. Provide grade crossing enforcement details in areas identified by Authority. Coordinate these sweeps with the local police agency and Authority operations.
6. Perform traffic enforcement and community outreach relative to Authority operations.
7. Provide Authority the advantages of a full-service law enforcement agency including specialized personnel and equipment resources that will be available for deployment to any location on the Redlands Passenger Rail on an as needed basis as determined by Contractor.

B. FARE ENFORCEMENT

1. Provide on-board fare enforcement including issuance of citations for fare violations and other quality of life matters in conjunction with Authority's operations contractor and on an as-needed basis. The contractor shall provide a monthly report of all fare enforcement activities. Activate periodic Fare Enforcement "sweeps" independent of Authority's operations contractor. These sweeps must be coordinated with the Authority's Manager of Security.
2. Provide training, on Penal Code 832 (Arrests and Firearms).
3. Provide monthly report on citations and warnings, locations, time spent, data and comparison of fare violations by line, train, type of infraction, fare evasion rate, and the number of fare activities.



C. SECURITY COORDINATION

1. Develop and update Memoranda of Understanding (MOUs) with all law enforcement agencies from City of San Bernardino to the City of Redlands within the southwestern corner of the County of San Bernardino, California.
2. Coordinate and provide daily required communication with local law enforcement, coroner's office and other public agencies in response to Authority's needs.
3. Respond and coordinate the response of local law enforcement agencies to all Redlands Passenger Rail -related crimes, accidents, and establish jurisdiction.
4. Establish jurisdiction with local police jurisdictions and coordinate with each court of competent authority.
5. Establish, manage and maintain filing and prosecutorial procedures with the city and district attorneys, and courts in each jurisdiction.

6. Collect and provide periodic incident reporting for Authority to assist in the development of preventative strategies such as the Engineering and Education efforts and provide this information to all law enforcement agencies within the jurisdiction(s) that the Redlands Passenger Rail Line covers. Provide Authority with a monthly report of on-board crimes by line, date, time, and type of crime. Provide Authority with a monthly report of ROW crimes by line, date, time and type of crime.
7. Provide Authority with monthly report on right-of-way citations, right-of-way warnings, number of right-of-way enforcement operations, and traffic citations at Highway-Rail Grade Crossings issued.

D. RIGHT-OF-WAY LAW ENFORCEMENT SERVICES

Services included within this scope of work include patrolling the Rights-of-Way, homeless encampment joint operations with Authority, and law enforcement on Railroad property (off the train).

Authority shall provide decentralized or centralized, locally situated facilities to house officers and equipment dedicated to Redlands Passenger Rail Line to ensure geographic coverage.

The types of issues to be dealt with are:

- Vandalism control and adjudication
- Crowd control and civil disorder response
- Hazardous materials incident response
- Identify and report visual and other right-of-way obstructions
- Terrorism/threats to transit systems
- Train accidents and derailments
- Grade-crossing safety
- Car theft and abandonment on the right-of-way
- Traffic enforcement
- Tunnel and bridge security and incident response
- Vice activities, pickpockets, prostitution, gambling, homicide, drug trafficking



- Trespassing related matters

E. PROJECT MANAGER (Command Staff)

The Contractor, in its sole discretion, but giving due consideration to the needs of Authority, will assign key personnel, including a Project Manager, to provide Services under this contract. Authority shall have the opportunity to interview Contractor's Project Manager. Contractor Command staff agrees to meet with Authority to address any concerns regarding personnel who are assigned to perform services under this Contract.

SCRRA shall be notified within 24 hours when there is a change to the command staff. The Contractor shall provide a mitigation plan to address the transition within 5 days of the notification.

F. REPORTING REQUIREMENTS

The Authority Project Manager will require your agency to provide daily, weekly, monthly, and annual compliance reporting. The daily, monthly, and annual reporting includes, but is not limited to the following:

Daily

- Deployment Schedule
- Daily Performance/Activities
- Identified Daily Deployment to focus areas
- Reporting All Personnel Injured on Duty to SCRRA Security Manager and SCRRA Security Operations Center within 24 hours
- Provide Supervisors on Duty List

Monthly

- Monthly Key Performance Indicators and Crime Statistics Report is due by the 10th of following month
- Fare Enforcement Activities report is due by the 1st of following month
- Detail Report on Labor Hours Provided by 15th of the following month
- Identified Area of Focus for Targeted Enforcement is due by the 30th of each month
- Trend Analysis: Crimes, Strikes, and Fare Evasion is due by the 10th of following month.
- Standing Operations and Coordination Meeting on the 2nd week of each month, at a mutually agreed date, time and location (in San Bernardino County or remotely). The Meeting will cover, but not Limited to the following:
 - Operational Issues
 - Review trends and Key Performance Indicators from previous month
 - Discuss planned operations
 - Communication/Coordination Issues
 - Identify Area(s) of Focus
 - Compliance Issue(s)

Annual

- Billing/Invoice Reconciliation and Audit: Schedule to be Provided by SCRRA, at a mutually agreed date, time and location (in San Bernardino County or remotely).
- Training – Including standard rail operations training and other topics required by FRA as provided by the Authority to Contractor. Reporting will be held at a mutually agreed date, time and location (in San Bernardino County or remotely).
- Contract Performance Review: Schedule to be Provided by SCRRA, at a mutually agreed date, time and location (in San Bernardino County or remotely).

II. STANDARDS OF PERFORMANCE

The standards of performance, methods of performance, discipline of officers, control of personnel, advancement in compensation of personnel, determination of proper law enforcement practices and procedures, and all other matters incidental to the manner of performance of services by Contractor hereunder shall be determined by the Contractor at his sole discretion. The responsibility of the Contractor, and of County, to Authority hereunder shall be to provide, as an independent contracting agency, the services herein contracted, and Authority shall not have the right to determine or direct the manner or means of performance.

The services to be provided by Contractor hereunder shall also include all equipment (including repairs thereto or depreciation thereon), supplies, communications, administration, labor, any County retirement contributions, travel expenses, and all other services, obligations, or expenditures necessary or incidental to the performance of the duties to be performed by Contractor under the terms of this Agreement. There shall be no reduction in Contractor compensation under this Agreement for normal downtime of vehicles. In all instances where special supplies, stationary, notices, forms, and any other similar items are to be issued in the name of the Authority and approved by the Contractor, the same shall be supplied by Authority at its own cost and expense.

In the event of riot, civil commotion, or other emergency on Authority property which requires additional emergency or "back-up" service, Contractor shall provide the same. In the event of such an emergency, Contractor's property, personnel or equipment assigned by Contractor for the performance of Contractor's duties hereunder, may be utilized by Contractor in connection with such an emergency. In cases where the Authority or its designee cannot be consulted prior to such deployment, such advisement must be made to the Authority or its designee immediately or as soon as possible thereafter. In any case, the Authority must be informed of the situation immediately or as soon as possible thereafter.

III. CONTRACT PRICING MODEL

The Authority intends to award a Contract for the services outlined in this Scope of Work.

For the remaining of the Fiscal Year 2022 – 2023 (March 15, 2023 to June 30, 2023) of this contract, the Contractor shall to be paid based upon billing rates in the Schedule B – Cost Schedule.

For Fiscal Year 2023-24 and Fiscal Year 2024-25 of the contract base term, the Contractor shall provide the Project Manager an estimated cost each May of the contract term for the upcoming Authority fiscal year, based on level of service assumptions agreed upon by the Authority and Contractor.

Compensation for additional services beyond the baseline service level described in Section II will be based upon the billing rates provided by the Contractor in the Schedule B – Cost Schedule.

The Authority and Contractor may renegotiate the budget in the event of an increase or decrease in Metrolink service of 10 percent or more, according to Section 14 of this Agreement

ATTACHEMENT B COST SCHEDULE

SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT

**ATTACHMENT B
LAW ENFORCEMENT SERVICES CONTRACT**

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY - REDLANDS COMMUTER TRAIN LINE

<u>LEVEL OF SERVICE</u>	<u>FY2022-23 COST</u>
1 - Sergeant	315,053 ¹
5 - Deputy Sheriff	1,102,715 ¹
6 - Unmarked Unit - Slick Top	107,366
Indirect Cost (37.69% of Direct Salaries and Benefits)	534,357
Subtotal for FY2022-23	\$ 2,059,491
Credit 07/01/22 to 03/14/23	(1,458,806)
Adjusted Cost for FY2022-23	\$ 600,685
Overtime March 15 to June 30, 2023	27,231
Indirect Cost (37.69% of Overtime)	10,263
Cost for FY2022-23	\$ 638,179 ¹

**ESTIMATED COST FOR FY2023-24 AND FY2024-25
SUBJECT TO CHANGE¹**

<u>LEVEL OF SERVICE</u>	<u>FY2023-24 COST</u>
1 - Sergeant	346,558 ¹
5 - Deputy Sheriff	1,212,987 ¹
6 - Unmarked Unit - Slick Top	118,103
Indirect Cost (37.69% of Direct Salaries and Benefits)	587,792
Overtime	92,793
Indirect Cost (37.69% of Overtime)	34,974
Estimated Cost for FY2023-24	\$ 2,393,207 ¹

<u>LEVEL OF SERVICE</u>	<u>FY2024-25 COST</u>
1 - Sergeant	381,214 ¹
5 - Deputy Sheriff	1,334,285 ¹
6 - Unmarked Unit - Slick Top	129,913
Indirect Cost (37.69% of Direct Salaries and Benefits)	646,572
Overtime	96,474
Indirect Cost (37.69% of Overtime)	36,361
Estimated Cost for FY2024-25	\$ 2,624,819 ¹

Estimated Total cost 03/15/2023 through 06/30/2025	\$ 5,656,205
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Southern California Regional Rail Authority (SCRRA) will be billed on a quarterly basis for actual hours of overtime worked for services provided under this Agreement.

¹ Personnel costs include salary and benefits and are subject to change by Board of Supervisors' action. Changes in salary and benefit costs will be billed to SCRRA on a quarterly invoice.