

NORTH COUNTY TRANSIT DISTRICT



PROCUREMENT & CONTRACT ADMINISTRATION DIVISION

INVITATION FOR BID (IFB)

IFB# 33314

FOR

COMPRESSOR AND DRYER REPLACEMENT

NOTE: The Table of Contents in this document is automated and contains hyperlinks to appropriate pages. Other portions of this document are also automated and hyperlink to referenced areas of the document.

810 Mission Avenue • Oceanside, CA 92054 • (760) 966-6500

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COMPRESSOR AND DRYER REPLACEMENT

SECTION 01: NOTICE TO BIDDERS

01.01 SUMMARY

The North County Transit District (NCTD) seeks bids for the replacement of two (2) compressors and two (2) dryers at NCTD's COASTER Operations Facility (COF) (the "Work").

01.02 NON-MANDATORY PRE-BID CONFERENCE

Bidders are strongly encouraged to attend the project's Pre-bid Conference held at 11:00 am PST on Monday November 13, 2023 outside of NCTD's General Administration Offices located at 810 Mission Avenue, Oceanside, CA 92054. A non-mandatory job site visit will follow the Pre-bid Conference. Personal Protection Equipment (PPE) in the form of hardhat, safety boots, reflective vest, and safety glasses will be required in certain areas of the job walk. NCTD is unable to provide such PPE. It's the responsibility of the Bidder to bring its own PPE. If Bidder does not have the proper PPE they will not be allowed in restricted areas.

Those wanting to attend the job walk will require valid access to Camp Pendleton. For those that don't already have valid access, NCTD is able to request temporary access through the base access sponsorship program and the completion of a Base Access Form. Attendees will need to personally take the Base Access Form and proper identification to the Camp Pendleton Base Control Access Branch (BCAB) office, located at the Las Pulgas Gate, to obtain temporary access. The Base Access Form and I.D. Requirements flyer will be provided by NCTD at the time of the request. The BCAB only processes requests Monday through Thursday, not including observed holidays.

To obtain NCTD base access sponsorship please follow the following steps:

1. Send an email request to administration@nctd.org at least ten (10) business days prior to the job walk. The email's subject line **must include** the solicitation number and the body of the email must contain the following information;
 - a. The name of attendee/s requiring base access
 - b. The two-letter abbreviation of the State or Province where the attendee's Driver License/Identification Card/Passport was issued (whichever is going to be used for identification purposes)
 - c. The Driver License/ID number/Passport Number for B above (inclusive of hyphens or other punctuations)
 - d. The date and time of the job walk
2. NCTD will send the request to BCAB and will inform the requester of the date they can go to the BCAB to obtain their temporary pass.
3. On that date the requestor shall go to the BCAB, in-person, with the Base Access Form and proper identification. The requestor can only go to the BCAB on the day of the job walk, which opens at 6:00 a.m. and can take up to two (2) hours to process. If the requestor attempts to get a base pass early, the pass they will be issued will expire prior to the job walk.
4. This process can take up to ten (10) business days. Untimely requests may be processed with no guaranty access will be granted in time, so please plan accordingly.

01.03 COMMUNICATIONS

All communications relating to this IFB must be directed through the Q&A tab within the solicitation posted on the NCTD bid management system "PlanetBids Vendor Portal". Any contact with NCTD during the solicitation period outside PlanetBids is grounds for disqualification. Answers to Questions or requests for clarification will be responded to directly on PlanetBids.

Bidders shall submit questions, as specified above, no later than 2:00 PM PST on November 14, 2023.

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NCTD changes to any part of the IFB, technical specifications, or requirements will be through the issuance of an Addendum sent to all prospective bidders who have downloaded the solicitation from the NCTD PlanetBids Vendor Portal.

Bidders are cautioned that oral communication such as opinions, comments, explanations, responses to questions, etc. are not binding on NCTD. Bidders shall not make contact with NCTD staff, other than the assigned Contract Officer with regard to any aspect of this solicitation.

01.04 CONE OF SILENCE

It is important to NCTD to maintain a level competitive playing field for all Bidders. Any verbal or written communications between any potential or actual Bidder, or its representatives and any NCTD Board Member, staff member, committee member, or any consultant, or employee of a consultant, providing NCTD with assistance, advice, or professional services relating to the matters covered by the solicitation or who is involved in any aspect of the proposal or bid evaluation process are strictly prohibited from the date the draft Scope of Work is sent to NCTD's Procurement and Contract Administration Division for approval through the date of execution of an Agreement or purchase order. The only exceptions to this are: (1) written requests regarding information or clarification made to NCTD's designated Contract Officer during the allowable time period under the solicitation; (2) any request for a reference from an NCTD employee that is sent to the designated CO during the procurement process, and (3) any communications at a publicly noticed meeting of the NCTD Board of Directors. Any violation of the requirements set forth in this section shall constitute grounds for immediate and permanent disqualification of the bidder/proposer from participation in this procurement.

01.05 BID SUBMISSION INFORMATION

ELECTRONIC ONLY – Bidders will submit documents exclusively through NCTD's online bidding system, PlanetBids. All required forms must be included with bid as PDF attachments and include signature of an individual authorized to bind Bidder. A copy of the Bid Bond must be included as a PDF with the submittal documents. To be responsive, the ORIGINAL Bid Bond must be received by NCTD at 810 Mission Avenue, Oceanside, CA 92054, **PRIOR** to the bid closing date and time. Electronic bids will be received on or before 2:00 PM PST/PDT on Monday, November 20, 2023 for Compressor and Dryer Replacement. Specific submission requirements are contained in the "General Instruction for Bidders" section of this IFB.

Federal funds will be utilized for this Agreement.

01.06 CONTRACT OFFICER

Responsibility for this IFB has been assigned to:

Suzie Tovar – Senior Procurement Contracting Officer
North County Transit District
810 Mission Avenue
Oceanside, CA 92054

Please note that all communication regarding this solicitation must be made through PlanetBids.

01.07 VENDOR REGISTRATION REQUIREMENTS

To register to participate in this solicitation, go to www.gonctd.com and click on "About NCTD" at the top of the page and then select "Doing Business with NCTD" from the pulldown menu options. Several links providing information on use of PlanetBids will then appear. The direct link to the registration page of the PlanetBids Vendor Portal for NCTD is available at the following web address: <http://www.planetbids.com/portal/portal.cfm?CompanyID=20134>.

Bidders must register with PlanetBids to receive email notices for this solicitation. Registered Bidders are responsible for ensuring that they have downloaded all documents including addenda, plans, specifications, drawings, and other supporting documentation for the project directly from PlanetBids that are necessary

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to submit a responsive and responsible bid. Please contact the Contract Officer if you are unable to comply with this requirement.

For individuals with sensory disabilities, documents may be made available in alternate formats. For information regarding alternate formats, contact the Contract Officer listed in the solicitation or write Procurement & Contract Administration Division, North County Transit District, 810 Mission Ave., Oceanside, CA 92054.

01.08 LICENSE(S) REQUIREMENTS

The Bidder shall possess, at the time the contract for the Project is awarded, the California Contractor's License Classification A, "General Engineering Contractor";. Pursuant to California Public Contract Code section 20103.5, no bid submitted shall be invalidated by NCTD for failure of the Bidder to be licensed in accordance with the laws of this state at the time of bid submittal. Failure of the Bidder to obtain proper and adequate licensing for award of the Agreement for the project shall constitute a failure to execute the Agreement and shall result in the forfeiture of its Bid Security, as required herein.

01.09 PREVAILING WAGE MONITORING REQUIREMENTS – SB 854

The State of California requires the payment of prevailing wage rates on all public works (including construction) projects in excess of one thousand dollars (\$1,000) pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California. In addition to the payment of prevailing wage the Bidder must comply with all applicable Department of Industrial Relations (DIR) registration and reporting requirements of SB 854 as may be amended from time to time.

No Bidder or subcontractor awarded in excess of \$25,000 may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No Bidder or subcontractor may be awarded an agreement for public work on a public works unless registered with the DIR pursuant to Labor Code section 1725.5. Small project exemption applies for all public works projects that do not exceed:

- \$25,000 for new construction, alteration, installation, demolition or repair
- \$15,000 for maintenance

This project is subject to compliance monitoring and enforcement by the DIR.

All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement).

For additional information on the DIR prevailing wage monitoring requirements – SB 854 see the following website: <http://www.dir.ca.gov/Public-Works/SB854.html>

01.10 COMPLIANCE WITH LABOR CODE REQUIREMENTS/PREVAILING WAGES

Work to be awarded as a result of this IFB may be funded in whole or in part by State of California bond proceeds. In accordance with Senate Bill X 2-9 and Assembly Bill 436, the Compliance Monitoring Unit (CMU) within the California Department of Labor Standards and Enforcement (DSLE) will monitor and enforce prevailing wage requirements on work performed under a contract awarded as a result of this IFB. As a requirement of a contract awarded as a result of this IFB, the Contractor must post a notice at the jobsite that the project is subject to CMU enforcement.

It has been determined that the Work herein described falls into the category of public works construction projects for Federal and State requirements. Bidders are hereby placed on notice that prevailing wage requirements apply to workers hauling materials used for paving, grading and fill onto a public works site that is part of construction activity. The Contractor will be required to comply with all of the terms and conditions (including Federal and State General Prevailing Wage requirements) prescribed for Contractor performing public works construction projects. The latest General Prevailing Wage determinations for crafts associated with public works construction projects shall apply. In all instances where Federal, State, and

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Local Prevailing Wages for a given craft differ, the higher Prevailing Wage shall be paid. Below are links that may assist Bidders and subcontractors in determining which higher rate to use in performance of this project.

Labor Compliance – Prevailing Wage Requirements: Prevailing Wage Determinations can be accessed at the below websites and are based on the original bid advertisement date as specified in the bid.

- California General Prevailing Wage Determinations: <http://www.dir.ca.gov>
- San Diego County Prevailing Wage Determinations: <http://www.dir.ca.gov/dlsr/PWD/>
- Davis-Bacon Prevailing Wage Determinations: <http://www.wdol.gov/dba.aspx>

It shall also be mandatory upon the Contractor and all subcontractors to comply with all other California Labor Code or Federal Department of Labor requirements, which include, but are not limited to, the employment of apprentices, hours of labor, retention of payroll records and debarment of Contractor and subcontractors, to the extent applicable.

The Contractor will be required to comply with all applicable Equal Employment Opportunity Laws and Regulations.

01.11 STORM WATER

Storm, surface, nuisance, or any other waters may be encountered at various times while performing Work under the Agreement. Federal, state, regional, local and NCTD ordinances, laws, rules and regulations require NCTD and its contractors to appropriately manage waters pursuant to, among other things, the requirements of the NCTD Storm Water Management Plan, the requirements of the Construction General Storm Water Permit, the Federal Clean Water Act, and the California Porter Cologne Water Quality Control Act. By submitting a bid, each Bidder acknowledges that it has investigated the risk arising from such waters and compliance with federal, state, regional, local and NCTD ordinances, laws, rules and regulations, has prepared its bid accordingly, agrees to comply with such federal, state, regional, local and NCTD ordinances, laws, rules and regulations, and assumes any and all risk and liabilities arising therefrom. By submitting a bid, each Bidder warrants that all employees and subcontractors will have sufficient skill and experience to perform the work under the project assigned to them without impacting water quality in violation of applicable laws, rules and regulations, and have received adequate training (including the QSP and/or QSD training referenced above) regarding the requirements of applicable laws, rules and regulations. Each Bidder must include all costs of compliance in the bid amount.

01.12 SUBMITTAL OF CERTIFIED PAYROLLS

In accordance with California Labor Code section 1776, certified payrolls must be submitted per the stricter of regulations, Federal, State, or Local, basis.

Effective April 1, 2015 all contractors and subcontractors awarded a contract must furnish electronic certified payroll records to the Labor Commissioner. In addition, a hard copy of certified payroll must be furnished to GAFCON at 5960 Cornerstone Court West, Suite 100, San Diego, CA 92121, Attention: Lizette Rodriguez.

01.13 AGREEMENT

The Bidder awarded the Agreement shall be required to execute NCTD's Agreement document, which is included in this IFB as Attachment 1. The Agreement contains language which is standard to all NCTD agreements and generally is not negotiable. If a Bidder requests an exception prior to bid submittal and is informed by NCTD that the proposed amended or substitute language is unacceptable, Bidder should propose with the expectation that the proposed amended or substituted language will not be accepted.

01.14 BONDING COMPLIANCE

Bonds: The Contractor will be required to furnish NCTD with Performance and Payment (Labor and Material) Bonds in an amount equal to 100% of the successful bid prior to execution of the Agreement for

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the project. All bonds are to be secured from a surety company that meets all of the State of California Bonding requirements, as defined in California Code of Civil Procedure section 995.120, and is authorized by the State of California, and all documents required by California Code of Civil Procedure section 995.660, to the extent required by law.

01.15 ESTIMATED BID SCHEDULE (SUBJECT TO CHANGE)

ACTIVITY	DATE/TIME
IFB Opportunity Advertisement	10/19/23
Deadline to submit request for temporary base pass for job walk. NOTE: NCTD will make every effort to process requests beyond this date but makes no guarantee that the base will complete the request in sufficient time to attend the job walk.	10/27/23 at 4:00 PM PST
Pre-Bid Conference/Job Walk	11/13/23 at 9:00 AM PST
Deadline for Submittal of Approved Equal Requests via PlanetBids Only	11/14/23 at 2:00 PM PST
Deadline for Submission of Questions or Request for Clarifications via PlanetBids Only	11/14/23 at 2:00 PM PST
Bid Due Date and Time	11/20/23 at 2:00 PM PST

01.16 DISADVANTAGED BUSINESS ENTERPRISES PARTICIPATION

As a recipient of federal funding, NCTD has established Disadvantaged Business Enterprise (DBE) program goals and is required to report on DBE participation each year so that its attainment efforts may be evaluated. NCTD's overall agencywide goal for Federal Fiscal Year 2023-2026 is 11.3%. The term DBE means a for-profit small business concern as defined in 49 CFR 26.5. Even if no federal funding will be used on the Agreement awarded pursuant to this solicitation and no DBE goal will be set, the selected Bidder will still be required to document use of SBs and DBEs in the performance of the Work.

The Agreement awarded as a result of this solicitation will have federal funding. Whether or not there is federal funding, DBE contractors are highly encouraged to participate as a prime contractor or subcontractor on NCTD procurements. The DBE goal for this procurement is set at 0%. If Bidder or any of its subcontractors, suppliers, or trucking companies are DBE-certified, Bidder is required to comply with the Notice Regarding Disadvantaged Business Enterprises Requirements and Instructions and complete a DBE Commitment Form and include it with its bid. In addition, a DBE letter of commitment is required from any DBE subcontractors confirming the DBE has agreed to participate and perform the work for which it has been listed in the List of Subcontractors. Additional DBE requirements applicable to the Agreement are set forth in detail in other sections of the Agreement.

Due to the significant subcontracting opportunities for DBEs and small businesses NCTD believes will be available to carry out portions of the Work, Bidders shall be required to submit a DBE and Small Business Utilization Plan of one to five pages describing how they intend to ensure DBEs and small businesses will have an opportunity to perform portions of the Work.

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Contractor shall report subcontractor payment details for any DBE subcontractor or supplier to NCTD using PlanetBids by the 20th of each month. Subcontractors with lower tier DBE subcontractors shall report payment details to NCTD using PlanetBids within 15 days from the date payment is received from Contractor or higher tier subcontractor. Contractor is responsible for ensuring subcontractors are verifying payments through PlanetBids on a timely basis and shall promptly notify delinquent subcontractors to verify payments. NCTD may impose penalties or withhold payments up to \$10,000 each month under the Agreement if Contractor fails to timely report subcontractor payments or reasonably notify delinquent subcontractors to report verification of payments.

END OF SECTION

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SECTION 02: GENERAL INSTRUCTIONS FOR BIDDERS

02.01 DEFINITIONS

Whenever, in the IFB or Agreement Documents, the following words are used, the intent and meaning shall be interpreted as follows:

Bidder/Bidders - persons, contractors, or corporations providing a submission of a bid to NCTD in response to the solicitation.

Contractor(s) - the Contractor to whom the Agreement is awarded. The terms Bidder and Contractor are interchangeable when referring to the Bidder that is awarded the Agreement.

Agreement Documents – the 1) Agreement, 2) all of the contents of the IFB and associated attachments, addenda, drawings, technical reports, and technical specifications, and 3) the Contractor's bid, in that order of precedence. Said documents shall be considered as part of any agreement made pursuant to this solicitation. Any terms and conditions in Contractor's bid, invoices, or other documents referenced therein shall not be binding on NCTD if they conflict with the Agreement or IFB.

Days - calendar days unless otherwise specified.

Construction General Storm Water Permit - the current State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities, as it may be amended or superseded, (currently Order No. 2009-0009-DWQ) issued by the State Water Resources Control Board for the State of California.

Executive Director - the Chief Executive Officer of NCTD or their authorized representative or agent.

Grand Total Bid Price - the grand total price of the bid and shall include all direct and indirect labor and material costs, duties, fees, and any other charges applicable to complete the total requirements as specified in the IFB including all addenda, agreement drawings and technical specifications. Taxes must be included in the bid but will not be included for purposes of determining the lowest bidder.

Hazardous Substances and/or Contaminated Materials - any substance, waste, or material which is determined by any state, federal, or local governmental authority to be capable of posing a risk of injury to health, safety, and/or the environment, including, but not limited to, all substances, wastes, and materials designated or defined as hazardous, extremely hazardous, or toxic pursuant to Section 311 of the Clean Water Act, 33 USC Sections 1321, et seq., Section 1004 of the Resource and Conservation and Recovery Act, 42 USC Sections 6903, et seq., Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Sections 9601, et seq.; Section 25141 of the Hazardous Waste Control Law, California Health and Safety Code Sections 25117, et seq.; Section 25316 of the Carpenter Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Section 25316; Section 25501 of the Hazardous Materials Release Response Plans and Inventory Law, California Health and Safety Code Sections 25280-25299, et seq., as may be hereinafter amended.

Linear Underground/Overhead Project (LUP) - include, but are not limited to, any conveyance, pipe, or pipeline for the transportation of any gaseous, liquid (including water and wastewater for domestic municipal services), liquescent, or slurry substance; any cable line or wire for the transmission of electrical energy; any cable line or wire for communications (e.g., telephone, telegraph, radio, or television messages); and associated ancillary facilities. Construction activities associated with LUPs include, but are not limited to, (a) those activities necessary for the installation of underground and overhead linear facilities (e.g., conduits, substructures, pipelines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment, and associated ancillary facilities); and include, but are not limited to, (b) underground utility mark-out, potholing, concrete and asphalt cutting and removal, trenching, excavation, boring and drilling, access road and pole/tower pad and cable/wire pull station, substation construction, substructure installation, construction of tower footings and/or foundations, pole and tower installations, pipeline installations, welding, concrete and/or pavement repair or replacement, and stockpile/borrow locations.

NCTD or Grantee - North County Transit District or its authorized representative or agent.

NCTD Board of Directors - the Governing Board of NCTD.

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NCTD's Project Representative, Engineer, Resident Engineer, Construction Manager, Project Manager - the authorized agent(s) or representative(s) of North County Transit District designated to ensure strict engineering, performance, job site review, and related conformance with the Agreement Documents.

Contract Officer - the authorized agent(s) of North County Transit District who is authorized to review and administer the Agreement Documents.

Notice of Intent to Award (NIA) - the written notice from NCTD to all Bidders identifying the intent to award to the lowest responsive, responsible Bidder following bid opening and opens the period for protest in accordance with the provisions of this IFB.

Notice to Proceed (NTP) - a written notice from NCTD to a Contractor authorizing the Contractor to commence work and to start the performance period.

Task Order Authorization - written authorization for Contractor or Subcontractor's off-site staff to perform work under this agreement. Task Order Authorization provides a description of the services to be performed, the scheduled completion date, the hours estimated to perform the work, the hourly rates to be charged and the estimated reimbursable rates.

Storm Water Pollution Prevention Plan (SWPPP) - a site-specific, written document that, among other things: (1) identifies potential sources of storm water pollution at the construction site; (2) describes storm water control measures to reduce or eliminate pollutants in storm water discharges from the construction site; and (3) identifies procedures the Contractor will implement to comply with the terms and conditions of, among other things, the Construction General Storm Water Permit and the current NCTD Storm Water Management Plan.

02.02 BID FORM – SUBMISSION INFORMATION

Bids must be submitted on the forms provided. Bids submitted in any other form will be considered non-responsive and shall be rejected. Bids shall include a submission regarding the information and services requested. The bid must be signed with the name and title of the person duly-authorized to sign the offer. Blank spaces on the appropriate bid forms must be properly filled in, and the content thereof must not be changed. All signatures shall be provided as legally binding handwritten signatures – typed signatures shall not be accepted. After signatures are placed in the appropriate places, pages can be scanned and uploaded to PlanetBids. Additions or changes shall not be made to the items mentioned therein. Any unauthorized conditions, limitations or provisions attached to a bid shall be cause for its rejection and in no event shall be a part of the Agreement Documents. Bids may be rejected if they show any alteration in form, are incomplete, or contain irregularities of any kind.

Bids are required for the entire Work, unless instructed otherwise in this IFB. Bids that are not for the entire work or are incompletely written or compiled may be considered non-responsive and be rejected.

In the event that the Bidder is a joint venture or partnership, the bid declaration shall be submitted with the signatures of the authorized officers of both parties to the joint venture or partnership or attach a power of attorney naming the individual authorized to sign all necessary documents. The name of the individual who shall sign all necessary documents for the joint venture or partnership should the joint venture or partnership be awarded the agreement, shall act in all matters relative to the Agreement resulting therefrom for the joint venture or partnership, shall be identified in writing on the document.

Delivery of electronic bid documents: Bidders will submit documents exclusively through NCTD's online bidding system.

Because bids can at times be ambiguous, NCTD reserves the right to request additional information before making an award. NCTD also reserves the right to seek clarification from any Bidder about any statement or part in its bid that NCTD finds ambiguous.

Delivery of bid bond documents: Bidders shall submit their Bid Bond in a sealed package and shall write/type the following identification information on the outermost sealed package or FedEx/UPS/other address label:

COMPRESSOR AND DRYER REPLACEMENT
Compressor & Dryer Replacement – IFB No. 33314

Attn: Suzie Tovar

NCTD

Bidder's Company Name and Address

Each bid bond submission should be addressed to the Contract Officer, identified above, and shall be delivered to 810 Mission Avenue, Oceanside, CA 92054 on or before the day and time set for the submission deadline. NCTD will not accept any bid bonds submitted by facsimile or email. **It is the sole responsibility of the Bidder to ensure that the bid bond package is delivered to the reception counter, accepted, and date/time stamped prior to the submission due date/time.**

If a bid bond is not received as specified in the manner above the bid will be considered non-responsive.

02.03 IFB/DRAWINGS/SPECIFICATION CHANGES

NCTD reserves the right to revise or amend the IFB or specifications up to the time set for opening the bids. Such revisions and amendments, if any, shall be issued by addenda to this solicitation. Copies of such addenda shall be sent to all prospective Bidders of the IFB. In the event that an addendum setting forth material changes, additions or deletions is issued when there is seventy-two (72) hours or less to the bid opening date, NCTD will extend the bid opening date by no less than three (3) business days. Clarification notices that do not significantly impact the Bidders ability to submit a bid shall not result in an extension of the bid opening date.

02.04 ADDENDA

The effect of all addenda to the Invitation for Bids shall be considered in the Bid Package and said addenda shall be made a part of the Bid Package submitted to NCTD. It is the Bidder's sole responsibility to ensure that all addenda have been acknowledged before submitting a bid response. Failure to acknowledge all addenda may render the bid package nonresponsive and result in its rejection.

02.05 APPROVED EQUAL REQUESTS

Whenever specification of any materials, process, or item is indicated or specified by grade, patent, or proprietary name or by name of manufacture, such specifications shall be deemed to be used for the purpose of facilitating description of material, process or article desired and shall be deemed to be followed by words "or approved equal" and salient characteristics listed. Bidders may, unless otherwise stated, offer any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified. However, NCTD has adopted certain uniform standards for certain material, processes and fixtures. If material, process or article offered by Bidders is not found to be an approved equal as identified by NCTD, (i.e. equal to or better in every respect to the item specified) the Bidder shall be required to furnish material, process or item specified in the solicitation at no additional cost to NCTD. The burden of proof as to the equality of any material, process or article shall rest with the Bidder.

Requests for approved equal must be received by NCTD, in writing, by the deadline stated in Planetbids. Any request for an approved equal or complaint concerning the equipment or material specifications must be fully supported with technical data, test results, or other pertinent facts as evidence that the substitute offered is equal to or better than the specification requirement.

Time limitations in this section shall be complied with strictly and in no case will an extension of time for performance of the agreement be granted because of Bidder's failure to request a substitution of an alternative item at the times and manner set forth herein. NCTD has the complete and sole discretion to determine if an item or article is an equal item.

02.06 DISCREPANCIES IN BIDS

Each Bidder shall furnish a price for all bid items as specified in the Line Item section on PlanetBids or indicate "No bid" if NCTD has specified that partial bids will be allowed. Partial bids shall be deemed nonresponsive unless NCTD has specified that partial bids will be allowed. The dollar amount shown for the Grand Total Bid Price in the Bid Price Form should match the amount in the attached Bid Declaration Form. Failure to furnish clear and legible pricing for all specified bid items may render a bid nonresponsive

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and may cause its rejection. In the event there are unit price bid items in the Bid Price Form and the "amount" indicated for a unit price bid item does not equal the product of the unit price and quantity, the unit price shall govern and the amount will be corrected accordingly. In the event there is more than one bid item in the Bid Price Form and the Grand Total Bid Price does not agree with the sum of the prices bid on the individual items, the prices bid on the individual items shall govern and the total for the schedule will be corrected accordingly and this may affect the apparent low bidder results.

02.07 BIDDERS SECURITY – BID BONDS

Each bid shall be accompanied by: (a) cash; (b) a certified check made payable to NCTD; (c) a cashier's check made payable to NCTD; or (d) a satisfactory bid bond payable to NCTD executed by the Bidder as principal and an admitted surety approved to conduct business in the State of California as surety, in an amount not less than ten percent (10%) of the maximum amount of the bid. Personal sureties and unregistered surety companies are unacceptable. The California admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be a satisfactory corporate surety with a rating of no less than A-, VII. The cash, check or bid bond shall be given as a guarantee that the Bidder shall execute the Agreement if it be awarded to the Bidder in conformity with the Agreement Documents and shall provide the surety bond or bonds as specified therein with the bid submission.

02.08 CONTRACT AND PERFORMANCE AND PAYMENT BONDS

The contract form which the Bidder awarded an Agreement shall be required to execute, and the form of the Performance Bond equal to one hundred percent (100%) of the successful bid, and Payment (Labor and Material) Bond equal to one hundred percent (100%) of the successful bid which the Contractor shall be required to furnish at the time of execution of the Agreement, are included in the Agreement Documents and should be carefully examined by Bidders. The required number of executed copies of the Agreement, the Performance Bond, and the Payment Bond is as specified in the Special Conditions. Contractor shall be required to submit the Performance Bonds, Payment Bonds, and executed contract, as required herein, prior to the award of contract.

The Performance and Payment (Labor and Material) Bonds must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure Section 995.120. In addition, to the extent required by law, the Bonds must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of San Diego that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California.

In the event the Bidder fails or refuses to post the required bonds, as specified in the IFB, NCTD may declare the Bidder's bid bond security forfeited as damages caused by the failure of the Bidder to post the additionally required bonds and execute such copies of the Agreement, and NCTD may award the Agreement to the next lowest responsible Bidder, or may call for new bids.

02.09 SUBSTITUTION OF SECURITY

If the Agreement will exceed \$5,000,000, pursuant to the provisions of California Public Contract Code Section 22300, at the request and expense of the Contractor, NCTD will pay the amounts retained as security for the completion of the project pursuant to the Agreement Documents, in compliance with the requirements of Public Contract Code section 22300.

02.10 OPENING OF BIDS

Online public bid opening is available on PlanetBids immediately following bid closing.

02.11 WITHDRAWAL OF BIDS AFTER CLOSING

Prior to Bid Closing: Any Bidder may withdraw its bid, either personally or by written request, at any time prior to the scheduled time for opening of bids. Any request to withdraw a bid shall be so worded so as not to reveal the amount of the original bid.

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After Bid Closing: No Bidder may withdraw its bid for a period of one hundred twenty (120) days after the bid closing date. Bids may be subject to acceptance by the NCTD Board of Directors during this one hundred twenty (120) day period.

02.12 SINGLE BID PROCEDURES

In the event a single bid is received, NCTD may conduct a price and/or cost analysis of the bid. The Bidder will cooperate with NCTD to assist in this analysis. The analysis is the process of examining the bid and evaluating the separate cost elements. NCTD may be unable to award an Agreement to a Bidder if there was not competitive bidding and the information provided by the Bidder is not sufficient to establish Bidder's prices are fair and reasonable.

02.13 TIE BID PROCEDURE

In the event of a tie bid situation, and if two or more Bidders remain equally eligible after determination of responsibility and responsiveness, award shall be made to the bidder whose bid was received first as evidenced by the time/date stamp recorded by Planetbids.

02.14 BIDDERS INTERESTED IN MORE THAN ONE BID

No person, Bidder or corporation shall be allowed to make or file or be interested in, as a principal, more than one bid for the project. However, a person, contractor, or corporation submitting a subcontract bid to a Bidder, or one who has quoted prices on materials to a Bidder, is not thereby disqualified from submitting a subcontract bid or quoting prices to other Bidders or from being a principal Bidder for the same work.

02.15 LATE BIDS

NCTD's online bidding system will not accept submittals after the date and time specified.

02.16 REJECTION OF BIDS/CANCELLATION OF SOLICITATION

NCTD reserves the right to reject any and all bids and to waive any informalities or irregularities in the bids. If all bids received are rejected, NCTD reserves the right to re-solicit the services by issuing a new IFB or to cancel the solicitation at any time prior to agreement award and not award an agreement.

02.17 INCURRED COST

NCTD will not reimburse the Bidders for costs incurred in the preparation of bids or after submission, during agreement award, or cancellation of the procurement.

02.18 BIDDER SATISFACTION

It is the responsibility of the Bidder to thoroughly examine and be familiar with any material such as drawings and specifications provided. The failure or omission of Bidder to receive or examine any Agreement Documents, addenda, other documents or to visit the site to become acquainted with conditions there existing, shall in no way relieve Bidder from obligations with respect to the bid requirements or to the Agreement. The submission of the bid shall be taken as prima facie evidence of compliance with this section.

02.19 AWARD OF AGREEMENT

The award of the Agreement, if made by NCTD, shall be to the lowest responsible Bidder whose bid complies with all of the prescribed requirements of the Agreement Documents.

After the public bid opening, an evaluation of the bid prices and the Bidders' submissions of the required completed forms and certifications will be performed. Determinations of responsiveness and responsibility (technical and financial) are made to determine the lowest priced responsive and responsible Bidder. If the Agreement value exceeds \$500,000, approval to award an Agreement by the NCTD Board of Directors is required. If the Agreement value is \$500,000 or less, Board approval to award is not required and NCTD staff will make the award determination. Upon approval by the NCTD Board of Directors or after a determination by staff is made, NCTD intends to execute an Agreement and issue an NTP after receipt of required bonds and insurance certificates including endorsements.

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02.20 PROTEST PROCEDURES

An actual or prospective Bidder who is aggrieved in connection with the solicitation or award of an agreement may submit a protest. Protests must be submitted in accordance with NCTD's Protest Procedures found at this link: [Protest Procedures June 2023 \(gonctd.com\)](https://gonctd.com/Protest-Procedures-June-2023)

02.21 NOTICE TO PROCEED (NTP)

Following the execution of all Agreement Documents by both parties and receipt by Board of all required bonds and insurance certificates, NCTD shall issue a Notice to Proceed ("NTP") with the Work. Commencing work by the Bidder before receipt of the NTP is at the sole risk and expense of the Bidder who shall be fully liable for any damage or injury sustained by NCTD or third persons resulting therefrom.

The Contractor shall begin work within Fourteen (14) Calendar days from the Notice to Proceed date. All of the Work included in the Agreement shall be completed no later than One-Hundred Seventy-Five (175) Calendar days after issuance of the Notice to Proceed. As time is of the essence for the Agreement, the Contractor shall prosecute the Work continuously and diligently.

02.22 SUBCONTRACTOR REQUIREMENTS

1. Non-Collusion Affidavit: Bidders on all public works contracts are required to submit an "Affidavit of Non-Collusion" with their bid and must be signed under the penalty of perjury and dated.
2. List of Subcontractors: Every Bidder shall comply with the Subletting and Subcontracting Fair Practice Act, Public Contract Code sections 4100, et seq., and shall set forth in its bid:

(a) (1) The name, the location of the place of business, and the California contractor license number of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

(2) An inadvertent error in listing the California contractor license number provided pursuant to paragraph (1) shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the corrected contractor's license number is submitted to the public entity by the prime contractor within 24 hours after the bid opening and provided the corrected contractor's license number corresponds to the submitted name and location for that subcontractor.

(3) (A) Subject to subparagraph (B), any information requested by the officer, department, board, or commission concerning any subcontractor who the prime contractor is required to list under this subdivision, other than the subcontractor's name, location of business, and California contractor license number, may be submitted by the prime contractor up to 24 hours after the deadline established by the officer, department, board, or commission for receipt of bids by prime contractors.

(B) A state or local agency may implement subparagraph (A) at its option.

(b) The portion of the work that will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in its bid.

(c) This section shall become operative on July 1, 2014.

3. Workers Compensation

In accordance with the provisions of Section 3700 of the Labor Code, the Contractor shall secure the payment of compensation to its employees. The Contractor shall sign and file with NCTD the included certificate prior to performing the work under this Agreement:

COMPRESSOR AND DRYER REPLACEMENT

Contractor must verify it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and that it will comply with such provisions before commencing the performance of the work of this Agreement.

02.23 SUBCONTRACTORS/SUBCONTRACTING

In compliance with the Subletting and Subcontracting Fair Practices Act (Chapter 2 [commencing at Section 4100], Division 5, Title 1 of the Government Code of the State of California) and any amendments thereof, each Bidder shall complete all required portions of the List of Subcontractors form. The Bidder shall list only one subcontractor for each such portion of work as is defined by the Bidder in its bid.

If a Bidder fails to specify a subcontractor, they shall be deemed to have agreed that they are fully qualified to perform that portion itself, and that it shall perform that portion themselves.

02.24 CONTRACTOR SAFETY TRAINING AND RWP TRAINING

The Federal Railroad Administration (FRA) requires railroads to provide Roadway Worker Protection (RWP) training to any worker whose job duties include inspection, construction, maintenance, or repair of track, bridges, roadway, signal and communication systems, roadway facilities, or maintenance machinery on or near the track (FRA 49 CFR 214). Contractor shall be responsible for requesting/scheduling RWP and the costs associated with attending the class.

For further information and the cost to attend RWP training, go to the NCTD website: <http://www.gonctd.com/working-around-the-rails>

02.25 SITE INVESTIGATION

At its own expense and prior to submitting its bid, Bidder shall take all necessary actions, as determined by Bidder, to become fully acquainted with the conditions relating to the construction and labor involved in order to fully understand the facilities, difficulties, and restrictions related to the execution of the work under the contract. Bidder acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling and storage of materials; (2) the availability of labor, water, electric power, and roads, including prevailing wages and other relevant cost factors; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; (5) the character of equipment and facilities needed preliminary to and during work performance; and (6) all applicable federal, state, and local laws, statutes, ordinances, orders, permits, guidelines, rules, and regulations, including those pertaining to the removal, excavation, hauling, containment, transportation, disposal, recycling, or handling of "Hazardous Substances and/or Contaminated Materials." Bidder also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by NCTD as well as from the drawings and specifications made a part of this contract. **Any failure of the Bidder to take the actions described and acknowledged in this paragraph will not relieve the Bidder from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to NCTD. Bidders are advised that proposed subcontractors should obtain their own sets of plans and specifications from the NCTD's bid management site.**

02.26 CAMP PENDLETON ACCESS:

The Contractor and subcontractor(s) will require access to Camp Pendleton in order to access the work site, which requires a Base Access Form from NCTD's Administration Department and may also require the completion of the Defense Biometric Identification System (DBIDS) pre-enrollment process (depending on length of time needed for access on Base). Individual employees will need to personally take the Base Access Form, to the Camp Pendleton Base Control Access Branch office to obtain an access badge. Individual employees will need to have a REAL ID card in order to gain Camp Pendleton access. Should the employee not have a REAL ID, a Passport with a Driver's License will suffice. If the individual does not have a passport, a Social Security Card, Birth Certificate, and Driver's License will suffice. The Contractor's

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Project Manager identified in the Agreement will be the point of contact for requesting Base Access Forms from NCTD.

To obtain the Base Access Form please follow the following steps:

1. Send an email request to administration@nctd.org at least ten (10) business days prior to the needing access onto Camp Pendleton. The email's subject line **must include** the Agreement number and the body of the email must contain the following information:
 - a. The name of attendee/s requiring base access
 - b. The two-letter abbreviation of the State or Province where the attendee's Driver License/Identification Card/Passport was issued (whichever is going to be used for identification purposes)
 - c. The Driver License/ID number/Passport Number for B above (inclusive of hyphens or other punctuations)
 - d. Project description and the dates and times needing access
2. NCTD will send the request to BCAB and will inform the requester of the date they can go to the BCAB to obtain their temporary pass.
3. On that date the requestor shall go to the BCAB, in-person, with the Base Access Form and proper identification.
4. This process can take up to ten (10) business days. Untimely requests may be processed with no guaranty access will be granted in time, so please plan accordingly.

END OF SECTION

**COMPRESSOR AND DRYER REPLACEMENT
SECTION 03: GENERAL CONDITIONS**

03.01 FEDERAL REQUIREMENTS

All contractual provisions required by the Department of Transportation, as set forth in FTA Circular 4220.1F, must be in all of the prime contractor's subcontracts. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NCTD requests which would cause NCTD to be in violation of the FTA terms and conditions.

Inasmuch as the services herein described are to be purchased with Federal assistance authorized by the Department of Transportation and Federal Transit Administration (FTA) laws and regulations codified at 49 USC § 5301 et seq.; or the Infrastructure Investment and Jobs Act of 2021, Public Law No. 117-58, November 15, 2021; or Title 23, United States Code (Highways); or the Transportation Equity Act for the 21st Century, Pub. L. 105-178, June 9, 1998, 23 USC § 101 note, as amended by the TEA-21 Restoration Act, Pub. L., 105-206, July 22, 1998, 23 USC § 101 note, (TEA-21), Moving Ahead for Progress in the 21st Century Act (MAP 21), Pub. L. 112-141, July 6, 2012, and other further amendments thereto, Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94 , as may be amended, or other Federal enabling laws administered by FTA and guidance thereto, including without limitation FTA Circular 4220.1F and amendments thereto, and 2 CFR Part 200, the Contractor will be required to comply with all terms and conditions prescribed for third party contract in a grant contract between the United States Department of Transportation and NCTD and to flow all applicable federal provisions down to subcontractors at every tier. Federal provisions applicable to this Agreement and third party contracting in general and Federal Davis-Bacon Wage Requirements are provided in Exhibits hereto.

Specific guidelines shall be those prescribed by "Federal Transit Administration Master Agreement" (Form FTA-MA) 49 C.F.R., Part 18, Federal Transit Administration (FTA) Circular 4220.1 F, and 49 CFR Part 200. If a conflict between FTA Circular 4220.1F and 2 CFR Part 200 occurs, 2 CFR Part 200 controls and supersedes.

03.02 FRAUD

The Bidder certifies and affirms through execution of the False Claims Certificate, contained in this solicitation, the truthfulness and accuracy of any statement it has made, it makes, it may make or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Bidder further acknowledges that if it makes, or causes to be made, a false or fictitious, or fraudulent claim, statement, or submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Bidder to the extent the Federal Government deems appropriate.

The Bidder also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307 (n)(1) on the Bidder, to the extent the Federal Government deems appropriate.

The Bidder agrees to include the above two (2) clauses in each subcontractor agreement financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

The Bidder acknowledges that NCTD has the right to revoke acceptance if it was deceived into an acceptance by fraud. Fraud involves an intentional deceit or falsehood. Acceptance due to fraud may be revoked even if the defect was patent.

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03.03 CONSULTANT(S) ASSOCIATED WITH PROJECT

The consultant listed below have been associated with the development and/or the preparation of this IFB and are provided for informational purposes only. This list is not intended to be relied on for purposes of compliance with any conflict of interest rules or applicable laws or regulations affecting this IFB. Bidders are solely responsible for due diligence in identifying and avoiding all potential conflicts of interest related to contracting for, and performing the services as required by this IFB and resulting Agreement.

- None

03.04 WHISTLEBLOWER HOTLINE

NCTD is an organization with strong values of responsibility and integrity and has developed a number of policies and procedures to provide Bidder with clear direction and guidance to ensure that NCTD's business is carried out with fairness, efficiency, impartiality and integrity. NCTD is committed to an environment where open, honest communication is the expectation, not the exception. If a Bidder or Contractor believes that a violation of law, regulations, Board policies, NCTD's Standard of Conduct Policy or any deviation from established business practices has occurred, NCTD encourages the Bidder or Contractor to report the suspected violation via the anonymous Whistleblower Hotline managed by third-party vendor, Navex Global at www.nctd.ethicspoint.com or by calling 855-877-6048.

03.05 PERFORMANCE AND PAYMENT BONDING REQUIREMENTS:

The Bidder shall be required, at the time of execution of the Agreement, to furnish a Performance Bond and Payment (Labor and Material) Bond that guarantees performance and payment with respect to all provisions of the Agreement Documents. The bonds shall be in the form required in the Section entitled Submission Documents, signed by Contractor as Principal and by an established reputable bonding or insurance company as surety, in the penal sum of 100 percent (100%) of the bid amount on the Bonds. The Performance and Payment Bonds must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure Section 995.120. In addition, to the extent required by law, the Bonds must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of San Diego that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California.

The Contractor warrants to NCTD, the Architect and/or Engineer that all materials and equipment furnished under the awarded Agreement will be of highest quality and new unless otherwise specified by NCTD, free from faults and defects and in conformance with the Agreement Documents. All materials and equipment not so conforming to these standards shall be considered defective. If required by NCTD's designated representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor warrants the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by NCTD and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the warranty at no cost to NCTD or reimburse NCTD upon demand, for its expenses incurred in restoring said Work to the condition contemplated in said Agreement, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs. The agency shall have the unqualified option to make any needed replacements or repairs itself or to have such replacements or repairs done by the Contractor. In the event NCTD elects to have said work performed by the Contractor, the Contractor agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from NCTD. If the Contractor fails or refuses to comply with its obligations under this warranty, NCTD shall be entitled to all costs and expenses, including attorney's fees and expert costs reasonably incurred by reason of the said failure or refusal.

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As additional security for these warranties, the Contractor shall, prior to the release of Final Payment as provided in the PAYMENTS clause of the IFB, furnish separate Maintenance Bonds in the form contained in this section to NCTD written ***by the same corporate surety that provides the Performance Bond and Payment Bond (Labor and Material) for this Agreement.*** These bonds shall secure the Contractor obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to one hundred percent (100%) of the Agreement amount, as adjusted (if at all).

END OF SECTION

COMPRESSOR AND DRYER REPLACEMENT

SECTION 04: SCOPE OF WORK

04.01 GENERAL BACKGROUND / DESCRIPTION

North County Transit District (NCTD) is soliciting bids for a qualified Contractor to furnish, deliver, and install two (2) air dryers and two (2) air compressors located at the COASTER Operations Facility (COF) on Camp Pendleton. Work shall also include the removal of the existing air compressors system including air dryers, associated piping, valves, instruments, controls, appurtenance, and testing, placement into operation, commissioning, and training requirements. In addition, there will be an optional task for Contractor to procure and install two 500 Gallon Air Storage Tanks at specified location in Attachment A that shall be exercised at NCTD's sole discretion

The Contractor shall meet all applicable industry standards and local, state, and federal regulatory requirements.

04.02 CONTRACTOR RESPONSIBILITIES

- A. Site Security - The Contractor, at their sole cost, shall be solely responsible for the security of Contractor's facilities, materials, and equipment at the work site. The Contractor shall understand that NCTD shall not be responsible for such security measures, and the Contractor shall take necessary and prudent measures to ensure the security of Contractor's facilities, materials, and equipment; including but not limited to security fencing, locked storage facilities, secured equipment areas, posted security personnel, and other measures deemed necessary by the Contractor. The cost for any damaged, vandalized, or stolen items shall be borne solely by the Contractor.
- B. Work and Materials - Until the final acceptance of all the work specified in the Contract, the Contractor shall have the charge and care of the work and of the materials to be used therein or materials which have been furnished by NCTD, and shall bear the risk of injury, loss or damage to any part thereof due to any cause, whether arising from the execution or from the non-execution of the work.

The Contractor shall rebuild, repair, restore and make good all losses or damages to any portion of the work or the materials occasioned by any cause before its completion and acceptance and shall bear the full expense thereof. In the event the Contractor fails with respect to its obligations under this section, NCTD may withhold a sufficient amount/amount of any payment/payments otherwise due to the Contractor necessary and sufficient to repair and remedy said losses or damages pursuant to its rights under this document. The suspension of work for any cause shall not relieve the Contractor of the responsibility for performing the services and providing the materials as specified herein.

- C. Unless otherwise specified in the Contract Documents, the Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up, and completion of the work. Such support that may need to be provided after normal working hours will be provided by the Contractor at its expense.
- D. Damaged Materials or Equipment - Any materials or equipment found to be damaged or defective at the time of delivery and are the Contractor's responsibility shall be repaired, replaced, or corrected by the Contractor hereunder without additional cost to NCTD. If the Contractor shall fail to comply within a reasonable time with any order of the Executive Director to repair/replace or correct damaged or defective work, then the Executive Director shall, upon written notice to the Contractor, have the authority to deduct the reasonable cost thereof from any compensation due to the Contractor.

COMPRESSOR AND DRYER REPLACEMENT

- E. Hazardous Communications Program - Notification to employees is required when materials that contain hazardous substances or mixtures are required on the work. A Safety Data Sheet as described in Section 5194 of the California Code of Regulations shall be requested by the Contractor from the manufacturer of any hazardous product used.

Material usage shall be accomplished with strict adherence to California Division of Industrial Safety requirements and all manufacturer's warnings and application instructions listed on the Safety Data Sheet and on the product container label.

Payment for performing all work necessary to provide safety measures shall be included in the prices bid for other items of work except where separate bid items for excavation safety are provided.

- F. Warranty of the Work - The Contractor warrants to NCTD that all materials and equipment furnished under an awarded contract will be of highest quality and new unless otherwise specified by NCTD, free from faults and defects and in conformance with the contract documents. All materials and equipment not conforming to these standards shall be considered defective. If required by NCTD's designated representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of all supplied materials and equipment. The work shall be safe, substantial, and durable construction in all respects.

The Contractor shall assume responsibility for all equipment and services provided under this contract, whether provided by the Contractor or by a subcontractor of its selection. A warranty for a period of twenty-four (24) months from the date of receipt and acceptance will be provided by the Contractor. Warranty shall include pick-up, delivery, transportation, travel-time, removal & replacement (R&R), if required.

In the event of substandard performance or faulty equipment, the Contractor shall reimburse NCTD, upon demand, for all costs incurred in restoring the work to the standards set forth in the contract, NCTD shall have the unqualified option to either make any needed replacements/repairs itself or to have such replacements or repairs done by the Contractor.

In the event NCTD elects to have the work performed by the Contractor, it shall be agreed that the repairs shall be made and such materials as are necessary shall be furnished and installed within the time specified in the contract.

If the Contractor fails or refuses to comply with his/her obligations under this warranty, NCTD shall be entitled to all costs and expenses, including attorney's fees and expert costs reasonably incurred by reason of the said failure or refusal.

- G. All staff entering NCTD ROW must be Roadway Worker Protection (RWP) training certified. Contractor shall be responsible (cost to be included in bid) for ensuring employees have been Roadway Worker Protection (RWP) trained in accordance with NCTD's working around the rails and right of entry requirements. RWP training is a 4-hour, classroom-based training available in English as well as Spanish with prior arrangement. Re-certification is required annually. Information regarding RWP training, including cost and scheduling, can be found at <https://gonctd.com/about-nctd/accountability/working-around-the-rails/>
- H. Contractor will conform to all applicable Occupational Safety and Health Association's (OSHA) standards, rules, regulations, and orders established by the State of California. The Contractor shall provide all safety equipment, materials, and will supply training as required. The Contractor shall provide its employees with appropriate safety apparel or personal protective equipment (PPE) which includes but is not limited to, sturdy leather work boots with a defined heel, ANSI approved hardhat, NCTD approved safety vest, gloves, and safety glasses as necessary.

COMPRESSOR AND DRYER REPLACEMENT

04.03 CALENDAR SCHEDULE

Contractor shall be responsible for completing all work described in this Scope of Work no later than one hundred seventy-five (175) calendar days after issuance of the Notice to Proceed. Optional Task 4a shall add fifty (50) calendar days to contract if executed by NCTD. Contractor shall submit prior to commencement of work: a detailed project schedule to include acquisition of materials/equipment, access authorization permit, length of time and potential dates required to perform work, testing, and closeout activities. All work shall occur Monday through Friday during 7am to 4pm unless otherwise approved by the NCTD Project Manager.

Table A: Project Schedule

Task	Schedule	Responsible Entity	Milestone (Calendar Days)
1	Roadway Worker Protection (RWP) Training Completed	Contractor	Notice to Proceed + 40 days
2	Submittal Delivery (Product Data and CPM), NCTD Permit Application	Contractor	Notice to Proceed + 40 days
3	Review and Approve Submittals and Work Plan	NCTD	Completion of Task 2 + 30 days
4	Mobilization and On-site Work	Contractor	Completion of Task 2 + 60 calendar days
4a	Bid Option 1	Contractor	Additional 50 days to Task 4
5	Punchlist Inspection	NCTD & Contractor	Completion of Task 3 + 5 calendar days
6	Project Acceptance	NCTD	Upon completion of Task 4 and receipt of submittals per submittal register

04.04 LOCATION OF SERVICE(S)

COASTER Operation Facility – 1 Coaster Way, Camp Pendleton CA 92055

04.05 SPECIFIED SERVICES

A. Base Bid and Bid Option

1. BASE BID – Replace two Air Compressors and two Air Dryers at COF
2. BID OPTION 1 – Procure and install two 500 Gallon Air Storage Tanks at specified location in Attachment A.

B. General Requirements (BASE BID & BID OPTION 1):

1. The Contractor shall comply with all applicable local, state, and federal regulations ordinances, codes general order, specifications, standards, and recommended practices and in particular American Society of Mechanical Engineers.
2. A detailed work schedule shall be submitted and approved prior to commencement of work. Changes in schedule require 72 hours advanced notice in order to assess impact to NCTD operations.
3. The Contractor shall verify all dimensions prior to procuring new material to ensure all new items fit seamlessly.
4. All conditions affecting the work of this contract shall be verified at the project site, noting all unusual conditions not specifically shown or described in the specifications, and the Contractor shall provide for the same in their proposals.

COMPRESSOR AND DRYER REPLACEMENT

5. The area is to be left clean and in as good condition at the end of the job. The Contractor shall remedy all damage caused by this work to the satisfaction of and at no cost to NCTD.
6. The Contractor is to provide for continuous protection of NCTD equipment, property, and personnel from the work being performed. The Contractor shall be responsible for protection of the work until the finished work has been accepted.
7. Dispose of all existing equipment and material in accordance with the manufacture and all local, state, and federal guidelines.
8. All new piping shall be securely supported with metal pipe hooks, straps, bands, brackets, or hangers, of adequate strength and quantity to prevent excessive vibration
9. Smoking is not permitted on NCTD Facilities.

C. General Requirements (BASE BID):

1. At the conclusion of the project two new air compressors and two air dryers must be fully functioning and supplying compressed air at specified air rating to NCTD.
2. The Contractor shall shut down and replace one air compressor and allow other air compressor to supply air to facility.
3. The Contractor shall be responsible for the demolition of the existing air compressors, air dryers, filters, valves, piping, and associated appurtenances. Remove and dispose of offsite, all removed materials.
4. Removal/disposal of existing equipment and installation of new.
 - a) Disconnect electrical connections to existing compressors and air dryers. Contractor shall follow proper lock-out/tag-out procedures with contractor furnished locks.
 - b) Disconnect inlet and outlet compressed air piping connections. Ensure all air is purged prior to starting working.
 - c) Proper disposal procedures for refrigeration liquid must be followed in accordance with Environmental Protection Agency.
 - d) Install new piping, valves, unions, and elbows as required. New piping shall be as required to reconnect to existing system. All new piping, valves, unions, and elbow shall be galvanized steel unless otherwise specified by project manager. Main point of connection to existing system shall be used. The Contractor shall replace all instrumentations shown in Attachment A.
 - e) Contractor to follow proper torque requirements outlined by the manufacture.
 - f) New units to be anchored to the floor. Anchoring requirements to follow manufactures guidelines. Items not covered by manufacturer's guidelines shall be determined by Contractor and approved by Engineer.
 - g) Dependent on manufacture selected, contractor will be required to shorten/extend compressed air tubing via an equivalent line size union fitting. Attached compressed air piping to new inlet/outlet point of connections.
5. Provide a safe working environment for NCTD, NCTD contracted personnel, and the Contractor's employees.

COMPRESSOR AND DRYER REPLACEMENT

6. The Contractor shall provide minimum ISO Class 4 air quality rate. The new compressed air system must comply with CAL OSHA Prop 65 condensation disposal regulations.
7. The Contractor shall install all new equipment with adequate amount of space for operators to conduct maintenance.
8. The Contractor shall verify room dimensions and ensure all new equipment and controls have similar mounting configuration as existing to minimize reconstruction.
9. The replacement air compressors unit shall conform to following specifications:
 - i. Manufacture: Ingersoll Rand, Atlas Copco, Quincy or approved equal
 - ii. Type: Rotary Screw Air Compressor
 - iii. Minimum capacity: 230 cubic feet per minute (CFM)
 - iv. Power: 230V / 3PH / 60HZ
 - v. Motor: Not to Exceed 50 Horsepower (HP)
 - vi. Working Pressure: 175 psig
 - vii. Max pressure: 200 psig
 - viii. Storage Tank Capacity Minimum: 240 Gallons
10. The two replacement air dryer units shall conform to following specifications:
 - i. Manufacture: ZEK, Ingersoll Rand, or approved equal
 - ii. Type: Refrigerated
 - iii. Minimum capacity: 250 cubic feet per minute (CFM)
 - iv. Power: 230V / 1PH / 60HZ
 - v. Motor: Not to Exceed 1.5 Horsepower (HP)
 - vi. Drying dewpoint: 35 deg. Fahrenheit (F)
 - vii. Max pressure: 200 psig

D. General Requirements (Bid OPTION 1)

1. The Contractor shall verify specified location for the installation of two 500 Gallon Air Storage Receiver Tanks near train tracks specified in Attachment A – Site Details
2. The 500 Gallon Air Storage Receiver Tanks must be mounted in accordance to manufacture specifications.
3. The 500 Gallon Air Storage Receiver Tanks shall have a pressure gauge, pressure relief valve, emergency shut off valve and a manual drain at the bottom of tank.
4. The Contractor shall connect the 500 Gallon Air Storage Receiver Tanks to the existing ¾" copper airline at each location as shown in Attachment A – Site Details
5. The 500 Gallon Air Storage Receiver Tanks must have two externals threaded ¾" copper nozzles Schedule 80, fitted with a threaded quick connect with an 5/8" airline connection per tank.
6. The Contractor shall paint new tanks per the following specifications listed below:
 - i. Tank color shall be white with a minimum 2 mil primer and 2 mil epoxy paint coat
 - ii. Above ground pipe color shall match tank with a minimum 2 mil primer and 2 mil epoxy paint coating
 - iii. Paint shall have corrosive resistant properties
 - iv. All materials shall be prepared for painting by removing mill scale, surface rust, loose paint, and oil residue
 - v. Painting shall be performed in such a manner to protect NCTD property and staff from overspray and or hazardous vapors

COMPRESSOR AND DRYER REPLACEMENT

7. The Contractor shall isolate the air lines from air compressor system in a safe manner that assures the uninterrupted operation of that air system or ancillary detriment to it. The Contractor shall follow proper lock-out/tag-out procedures with contractor furnished locks. Purge airline, fittings, and tank within air line system prior to starting removal/ or installation work.
8. The 500 Gallon Air Storage Receiver Tanks must be ASME Certified with U-Stamp.
9. At the project construction completion for BID OPTION 1, the Contractor shall complete and provide two new fully functioning 500 Gallon Air Storage Receiver Tanks to NCTD.

E. Submittals:

Provide a completed submittal log identifying the following but not limited to scheduled submittal date, required approval date, scheduled order date and required delivery date. Submittal requirements are defined as follows:

1. **Product Data:** Data composed of catalogue cuts, brochures, fly sheets, circulars, specifications, and other data which provide calculations, descriptions, analysis, agency listings, or other printed information and documentation regarding the Work. Product data shall be in sufficient detail and scope to verify compliance with the contract documents.
2. **Installation Instructions:** Preprinted material describing manufacturer's recommended installation procedures of a product, system, or material. Instructions shall include site or surface preparation; required working conditions; sequences of work; required drying or setting time, if any; required materials, tools, equipment, etc. Include special notices and Safety Data Sheets, if any, concerning impedances, hazards, and safety precautions.
3. **Schedules:** A tabular list of data including locations, features, dates, sequences, quantities, or other pertinent information regarding products, materials, equipment, labor, or components to be used in the Work.
4. **Statements:** A document, required of the Contractor, or through the Contractor by way of a supplier, installer, manufacturer, or other lower tier contractor, that describes procedures, acceptability of methods or personnel, qualifications, or other verification of quality.
5. **Factory Test Reports:** A report signed by an authorized official or engineer of a testing laboratory that a material, product, or system identical to that provided has been tested in accordance with the specified requirements. Include the test method, date(s), a statement that the test was performed in accordance with the test requirements, and the results. Testing done three or more years before the date of the award of contract shall not be valid.
6. **Field Test Reports:** A written report which includes the findings of a test made at the jobsite, or on a sample taken from the jobsite, on a portion of the Work, during or after installation. The report shall be signed by an authorized official or engineer of a testing laboratory that a material, product, or system identical to that provided has been tested in accordance with the specified requirements. Include the test method, date(s), a statement that the test was performed in accordance with the test requirements, and the results.
7. **Certificates:** Statements signed by a responsible official of a manufactured product, system, or material attesting that it will meet the specified requirements. Statements shall include the name of the project, a list of the specific requirements being attested to, and shall be dated after the award of the contract.

COMPRESSOR AND DRYER REPLACEMENT

8. Reference Manuals: Manuals published by established trade and industry associations, which may contain product standards of quality, manufacturing specifications, standard drawings and details, industry nomenclature, installation instructions, etc.

F. Training

1. The Contractor shall provide a total of eight (8) hours of training maximum and training sessions no longer than 2 hours per training session. Training shall be for the new Rotary Air Compressors, Air Dryers, and associated equipment, valves, and instruments. Training shall cover the following, at a minimum:
 - i. Review catalog cut sheets, parts list, drawings, and all components of approved submittals and operation manuals.
 - ii. Show how to use spare parts, if any, and how to order parts.
 - iii. Installation of specific equipment, identifying piping and flow options, valves and their purpose, and instrumentation including location of primary element and location of instrument readout.
 - iv. Review safety references and discuss proper precautions and safety procedures around equipment and process facilities, including applicable fire safety and fire codes.
 - v. All modes of operation and procedures for startup, shutdown, leak test, normal operation, and emergency operating procedures including discussion of system integration and electrical interlocks, if any.
 - vi. Demonstrate the unit and perform standard operating procedures, rounds checks, startup and shutdown procedures including isolation for maintenance work and/or long-term nonuse.
 - vii. Operation troubleshooting procedures.
 - viii. Preventative maintenance.
 - ix. Corrective maintenance.
 - x. Questions and Answers
2. Submit proposed training schedule and lesson plans, including trainer qualifications, to NCTD one month prior to training. At least one week prior to training sessions submit training manuals, handouts, visual aids, reference material to NCTD. NCTD will not schedule or allow training until all items are reviewed and accepted by NCTD project Manager. All documents shall be submitted in electronic format acceptable to NCTD.

04.06 DELIVERABLES

- a. RWP Training Certificates
- b. Right of Entry Permit / Construction Work Plan – including construction schedule, laydown and staging areas, and activity hazard analysis
- c. Schedule of values
- d. As-Built Drawings
- e. At the project construction completion, the Contractor shall complete and provide two new fully functioning air compressors and two new air dryers to NCTD.
- f. Daily Reports and Weekly Progress Meetings
- g. Daily Reports: Contractor shall electronically submit daily production reports summarizing the work complete on each day. The reports shall be submitted to NCTD's Project Manager by 12:00 pm of the following business day.
- h. Close-out Submittals:

COMPRESSOR AND DRYER REPLACEMENT

1. Operations and Maintenance manuals
2. Manufacturer's and Contractor's Workmanship warranties, which shall include aspects of Work to be covered under the warranty, type of corrections and replacements to be provided in the event of failure of the product, material, or system, complete terms and conditions, and duration of warranty. Term of warranty begins on date of acceptance of work; this date shall be included on all warranty documentation.

04.07 NCTD RESPONSIBILITIES

Access to COASTER Operation Facility Monday through Friday during business hours of 7am to 5pm.

04.08 ATTACHMENTS

- A. Attachment A: Site Details
- B. Attachment B: As-Builts

END OF SECTION

COMPRESSOR AND DRYER REPLACEMENT

SECTION 05: INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Work hereunder and the results of that work by the Contractor, its agents, representatives, employees, or subcontractors. Commercial general liability, workers' compensation, employer's liability, and automobile liability coverage are required. All required insurance types and limits are included in attached Agreement sample and should be reviewed carefully by Bidder, its risk personnel, and insurance carrier(s) prior to bidding.

Prior to Agreement award, Contractor shall be required to submit Certificates of Insurance with the limits specified in the Agreement via PlanetBids using the My Insurance feature. If you need assistance with this, please click on the Help Center (top right) in PlanetBids to see instructions. If further assistance is needed enter a support ticket with PlanetBids or call it directly for assistance.

END OF SECTION

**COMPRESSOR AND DRYER REPLACEMENT
SECTION 06: SUBMISSION DOCUMENTS**

As indicated below, the documents of this part of the IFB must be completed by the Bidder and submitted with the bid. If all documents identified below are not submitted and/or are not complete and executed, the bid may be classified as non-responsive and may not be considered further. **Typed or electronic signatures on forms calling for a signature will not be accepted.**

The following check-off list is provided to assist in assuring a complete submission:

1. ☐ BID DECLARATION FORM
2. ☐ BIDDER'S QUESTIONNAIRE FORM
3. ☐ BID BOND FORM (*Or other form of Bidder's security*)
4. ☐ LIST OF SUBCONTRACTORS
5. ☐ BUY AMERICA CERTIFICATE
6. ☐ WORKER'S COMPENSATION CERTIFICATE
7. ☐ CERTIFICATION OF RESTRICTIONS ON LOBBYING
8. ☐ ELIGIBILITY CERTIFICATION
9. ☐ CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION
10. ☐ CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION – FOR EACH SUBCONTRACTOR
11. ☐ PUBLIC RECORDS ACT INDEMNIFICATION CERTIFICATE
12. ☐ GUARANTY
13. ☐ EEO CERTIFICATE
14. ☐ FALSE CLAIMS CERTIFICATE
15. ☐ DISADVANTAGED BUSINESS ENTERPRISE INFORMATION – PRIME
16. ☐ DISADVANTAGED BUSINESS ENTERPRISE CERTIFICATION, IF APPLICABLE
17. ☐ DISADVANTAGED BUSINESS ENTERPRISE INFORMATION – FOR EACH SUBCONTRACTOR (ATTACH COPY OF CERTIFICATION)
18. ☐ REFERENCE CHECK FORM (THREE (3) REFERENCE CHECK FORMS REQUIRED FOR SUBMISSION)
19. ☐ NON-COLLUSION AFFIDAVIT
20. ☐ BID SCHEDULE
21. ☐ DBE COMMITMENT FORM (Required if federally funded and DBE subcontractor, supplier, or trucking company will be used)
22. ☐ DBE LETTERS OF COMMITMENT (See Section 1.16) (Required if federally funded for each DBE subcontractor, supplier, or trucking company that will be used. A DBE letter of commitment is required from any DBE subcontractors confirming the DBE has agreed to participate and perform the Work for which it has been listed in the List of Subcontractors.)
23. ☐ DBE AND SMALL BUSINESS UTILIZATION PLAN (See Section 1.16) (Required if federally funded and NCTD determines that there will be a significant number of subcontracting opportunities available for DBEs and small business due to the dollar value of the award and/or the type of Work involved.)

COMPRESSOR AND DRYER REPLACEMENT

The following items shall be provided by the Successful Contractor as indicated in NCTD's Notice of Award and are required prior to commencement of work and issuance of a Notice to Proceed.

1. FAITHFUL PERFORMANCE BOND - ATTACHED
2. PAYMENT BOND - ATTACHED
3. INSURANCE CERTIFICATES – REQUIRED FROM AWARDEE
4. FULLY EXECUTED AGREEMENT
5. VENDOR INFORMATION SHEET
**From Contractor who has never done business with NCTD -available from NCTD Contracts Administrator.*
6. ADDITIONAL INFORMATION RELATED TO SUBCONTRACTOR IDENTIFICATION
FORM (phone number, license number and license expiration date of each Subcontractor listed in a Bidder's bid within twenty-four (24) hours of bid submittal deadline or up to 3:00pm on the first business day following the bid submittal deadline if the prescribed hour deadline falls on a weekend or legal holiday)

**COMPRESSOR AND DRYER REPLACEMENT
BID DECLARATION FORM**

NORTH COUNTY TRANSIT DISTRICT
810 Mission Avenue
Oceanside, CA 92054

Having carefully and completely inspected the location of the proposed work and examined all parts of the IFB, including Contract Drawings and Technical Specifications, the undersigned proposes to complete the total requirements according to these documents for a Grand Total Bid Price (not including taxes, but including all other fees or charges and any options) of \$ _____. This amount shall match the Grand Total Bid Price Bidder entered in PlanetBids.

If written notice of the acceptance of this bid is mailed or delivered personally to the undersigned within one hundred twenty (120) days after the date set for the opening of this bid, or at any time thereafter before it is withdrawn, the undersigned Bidder shall execute Agreement Documents with NCTD, in accordance with this bid as accepted.

Bidder has reviewed the Protest Procedures located at: [Protest-Procedures-Final-June-2022.pdf \(gonctd.com\)](https://gonctd.com/Protest-Procedures-Final-June-2022.pdf).

The undersigned agrees to provide all necessary machinery, tools, apparatus and other means to do all the work and furnish all the materials for the work specified in the IFB and any resulting Agreement, and will prosecute the work exactly as described in the Agreement Documents, unless otherwise authorized by written Change Order or Supplemental Agreement, and that the work will be completed within the time requirements and the undersigned will comply with the Guaranty Requirements of this IFB.

Receipt is acknowledged during the bidding period of the following addenda, number(s) _____.
(if none were received, the Bidder is to state "none.")

The Breakdown of the Total Bid Price is provided by Bidder on the Bid Price Form included herein.

Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

**COMPRESSOR AND DRYER REPLACEMENT
BIDDER'S QUESTIONNAIRE FORM**

1. Legal Name of Bidder: _____
Address: _____
Contact Name: _____
Phone: _____ Fax: _____ Email: _____
Company DUNS #: _____

2. Name Bidder's principal financial institution for financial responsibility reference:
Name of Bank: _____
Street Address: _____
City and State: _____ Telephone: (____) - _____
Officer Familiar with Bidder's Account: _____

3. The following are the names, titles, addresses, and phone numbers of all individuals, partners, joint ventures, and/or corporate officers having a principal interest in this bid:

4. The date of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this bid are as follows:

5. In the past five years, has Bidder been a party to litigation alleging violation of a federal law, fraud, or negligence in its work that could materially affect its ability to perform if it is awarded the Agreement? If so, when, where, and what was the outcome?

6. Does Bidder represent that it has adequate financial resources and staff to perform the Scope of Work (SOW) for this solicitation? ____ No ____ Yes If yes, provide an explanation.

7. Does Bidder have any reason to believe it has actual or potential conflicts of interest related to NCTD or that would interfere in any way with Bidder's performance of the SOW or ability to provide unbiased advice to NCTD for this solicitation?

____ No ____ Yes If yes, provide an explanation.

8. Does Bidder have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability?

____ No ____ Yes If yes, provide an explanation.

COMPRESSOR AND DRYER REPLACEMENT

9. Have any of Bidder's management or executive level personnel been convicted of a felony criminal violation under any Federal law within the preceding 24 months?

___ No ___ Yes If yes, provide an explanation.

10. Have any licenses Bidder will rely on for the Scope of Work lapsed at any time in the last five years?

___ No ___ Yes If yes, provide an explanation.

11. All current and prior DBAs, alias, and/or fictitious business names for any principal having an interest in this bid are as follows:

12. Has Bidder ever failed to complete any work awarded to it? If so, when, where, and why?

13. Provide three (3) References that NCTD can contact to verify experience with SOW outlined in this solicitation. Note that NCTD may check other references in addition to this list and take them into consideration.

- (1) Name of Project Owner: _____
Address: _____
Contact Name: _____
Phone: _____ Fax: _____ Email: _____
- (2) Name of Project Owner: _____
Address: _____
Contact Name: _____
Phone: _____ Fax: _____ Email: _____
- (3) Name of Project Owner: _____
Address: _____
Contact Name: _____
Phone: _____ Fax: _____ Email: _____

14. In which state(s) is Bidder's business registered with the applicable Secretary of State?

_____.

The person signing this form agrees and confirms that he/she/they is authorized to sign it on behalf of Bidder and all statements are true and correct as of the date signed.

Print Name: _____ Title: _____

Signed by: _____ Date: _____

COMPRESSOR AND DRYER REPLACEMENT

BID BOND FORM

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____,
as BIDDER, and _____, as SURETY, are held and Contractually bound
unto North County Transit District, as AGENCY, in the penal sum of _____ Dollars, which is
ten percent (10%) of the total amount bid by BIDDER to AGENCY in PlaentBids for the above stated project,
for the payment of which sum, BIDDER and SURETY agree to be bound, jointly and severally, Contractually
by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the BIDDER is about to submit a bid to
AGENCY for the above stated project, if said bid is rejected, or if said bid is accepted and a contract is
awarded and entered into by BIDDER in the manner and time specified, then this obligation shall be null
and void, otherwise it shall remain in full force and effect in favor of AGENCY.

IN WITNESS WHEREOF, the parties hereto have set their names, titles, hands and seals this _____
day of _____, _____, the name and corporate seal of each corporate party being hereto affixed and
these presents duly signed by its undersigned representative pursuant to the authority of its governing
body.

(SEAL)

Attest:

Bidder: _____

By: _____

Title: _____

(SEAL)

Witness:

Surety: _____

By: _____

Title: _____

**COMPRESSOR AND DRYER REPLACEMENT
LIST OF SUBCONTRACTORS FORM**

In compliance with the Subletting and Subcontracting Fair practices Act (Chapter 2 [commencing at Section 4100], Division 5, Title 1 of the Public Contract Code of the State of California) and any amendments thereof, each Bidder shall complete all portions of the List of Subcontractors form attached hereto. The Bidder shall list only one Subcontractor for each such portion as is defined by the prime Contractor in this bid.

If a Bidder fails to specify a subcontractor, it shall be deemed to have agreed that it is fully qualified to perform that portion itself, and that it shall perform that portion itself.

No Bidder whose bid is accepted shall (a) substitute any subcontractor, (b) permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work. Subletting or subcontracting of any portion of the work in excess of one-half of one percent of the Bidder's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the authority awarding this Agreement setting forth the facts constituting the emergency or necessity.

COMPRESSOR AND DRYER REPLACEMENT

LIST OF SUBCONTRACTORS

The Contractor shall not substitute any subcontractor, permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original proposal, or sublet/subcontract any portion of the work without the written permission of NCTD. This listing of subcontractors shall include any subcontractors who will haul materials used for paving, grading and fill onto a public works site that is part of construction activity.

Name of Subcontractor	If Applicable, License Number /Expiration Date	Public Works Contractor Registration Number with DIR and Expiration Date	Address and Phone Number	Total Compensation of Sub and % of Total Agreement Amount	Specific Description of Subcontract	CUCP Certified DBE and/or DGS Certified SB
				\$ _____ _____ %		
				\$ _____ _____ %		
				\$ _____ _____ %		
				\$ _____ _____ %		
				\$ _____ _____ %		

- Do not list alternative subcontractors for the same work.
- Use additional sheets as necessary.
- The Bidder will not substitute any person, contractor, or corporate organization as Subcontractor in place of the Subcontractors designated in the original bid without the written consent of the NCTD Contract Officer pursuant to the termination provisions of 49 CFR 26.53 (f)(l)(i) and California Public Contract Code Chapter 4, Part 1, Division 2.
- Value of subcontract and percent of total contract must be presented at time of bid.
- Caltrans certified DBE Contractors can be found at the following website: [Caltrans - Disadvantaged Business Enterprise System \(dbesystem.com\)](https://dbesystem.com)

California Dept. of General Services (DGS) certified Small Business (SB) Contractors can be found at the following website:

<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

COMPRESSOR AND DRYER REPLACEMENT

BUY AMERICA CERTIFICATE

If steel, iron, or manufactured products (as defined in §§ 661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each Bidder in accordance with the requirement contained in § 661.13(b) of this part.

Only check the applicable box. Bidders who check both boxes will be deemed non-responsive.

☐ *Certificate of Compliance with Buy America Requirements* - The Bidder hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

☐ *Certificate of Non Compliance with Buy America Requirements (If checked, required waiver must be attached)* - The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

NOTE: Any steel, cement, lumber and all manufactured products used in the contract and for the contract projects supported by Federal funds (FTA) must be produced in the United States of America. The Agreement will be an FTA funded project and the Contractor must keep all product manufacture locations on file and must present on demand. Furthermore, these files will be turned over to NCTD upon Agreement completion.

☐ *Certificate of Compliance with Buy America Requirements is **Not Applicable** because the bid submitted is below \$150,000.*

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

**COMPRESSOR AND DRYER REPLACEMENT
WORKERS' COMPENSATION CERTIFICATE**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of the Labor Code and I will comply with such provisions before commencing the performance of the Work of this Agreement.

Official, legal name of Contractor or individual (Type or Print) offering the bid

Print Name: _____ Title: _____

Signed by: _____ Date: _____

**COMPRESSOR AND DRYER REPLACEMENT
CERTIFICATION OF RESTRICTIONS ON LOBBYING**

I, _____ hereby certify on behalf of

(Type name)

_____ that:

(Name of company)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If at any point after the Agreement is executed, it or one of its subcontractors will use any funds, whether or not they are Federal appropriated funds, to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement (i.e. lobbying), the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, which require the undersigned or any applicable subcontractor to report quarterly on any event that occurs that requires disclosure, or that materially affects the accuracy of the information contained in any disclosure form previously filed by the entity. Those events may include: a cumulative increase of \$25,000 being paid for lobbying, or a change in the person(s) or individual(s) attempting to influence such action, or a change in the officer(s), employee(s), or member(s) contacted to attempt to influence such action. The undersigned and its subcontractors at any tier shall promptly provide NCTD's Contract Officer with a copy of the completed Standard Form-LLL, "Disclosure Form to Report Lobbying" and any quarterly changes thereto.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontractors, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20____.

Official, legal name of Contractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

**COMPRESSOR AND DRYER REPLACEMENT
ELIGIBILITY CERTIFICATION**

☒ **Federally funded**

If federally funded, the award of this Agreement is subject to a financial assistance contract between the North San Diego County Transit Development Board and the U.S. Department of Transportation. Any name appearing on the Comptroller General's list of ineligible bidders for federally-financed or assisted contracts is not eligible for this Agreement.

If federally funded, the Firm shall certify the following:

I hereby certify that neither I, the Bidder, nor any officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible bidders for federally-funded and assisted contracts. In the event any of the above persons or parties become included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

☐ **Not federally funded**

NCTD has determined that any name appearing on the Comptroller General's list of ineligible bidders for federally-financed or assisted contracts is not eligible for this Agreement, regardless of the funding source.

If not federally funded, Firm shall certify the following:

I hereby certify that neither I, the Bidder, nor any officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible bidders for federally-funded and assisted contracts. In the event any of the above persons or parties become included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

Official, legal name of Contractor or individual (Bidder) (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

**COMPRESSOR AND DRYER REPLACEMENT
CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND
OTHER RESPONSIBILITY MATTERS**

Bidder certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
5. The award of this Agreement is subject to a financial assistance contract between the NCTD and the U.S. Department of Transportation. Any name appearing on the Comptroller General's list of ineligible Contractor for federally financed or assisted contracts is not eligible for this Agreement.
6. The Contractor hereby certifies that neither it nor any of its officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible contractors for federally funded and assisted contracts. In the event any of the above persons or parties becomes included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL SUCCESSFUL BIDDER FOR A MAJOR THIRD PARTY CONTRACT), CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Official, legal name of Contractor or individual (Type or Print) offering the bid

Print Name: _____ Title: _____

Signed by: _____ Date: _____

**COMPRESSOR AND DRYER REPLACEMENT
CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND
OTHER RESPONSIBILITY MATTERS
TO BE COMPLETED BY EACH SUBCONTRACTOR (NOT THE PRIME CONTRACTOR)**

Subcontractor certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
5. The award of this Agreement is subject to a financial assistance contract between the NCTD and the U.S. Department of Transportation. Any name appearing on the Comptroller General's list of ineligible Contractor for federally financed or assisted contracts is not eligible for this Agreement.
6. The Subcontractor hereby certifies that neither it nor any of its officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible Contractors for federally funded and assisted contracts. In the event any of the above persons or parties becomes included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

THE SUBCONTRACTOR (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL SUCCESSFUL BIDDER FOR A MAJOR THIRD PARTY CONTRACT), CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Official, legal name of Subcontractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

COMPRESSOR AND DRYER REPLACEMENT

PUBLIC RECORDS ACT INDEMNIFICATION CERTIFICATE

The Bidder certifies that:

It will indemnify and defend NCTD in the event NCTD withholds production of any records submitted in response to this IFB that are marked "Confidential", "Trade Secret", "Proprietary", or similar designations, in response to a Public Records Act request pursuant to California Government Code section 6250 or a Freedom of Information Act request

Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

**COMPRESSOR AND DRYER REPLACEMENT
GUARANTY**

To the North County Transit District, as Agency.

The undersigned guarantees the construction and installation of the Work included in this project.

Should any of the materials or equipment prove defective or should the Work as a whole or in part prove defective, due to faulty workmanship, material furnished or methods of installation, or should the Work or any part thereof fail to operate properly as originally intended and in accordance with the Plans and Specifications, due to any of the above causes, all within 12 months after the date on which this Agreement is completed and accepted by the Agency, or the date of recordation of Notice of Completion, whichever is the later, the undersigned agrees to reimburse the Agency upon demand, for its expenses incurred in restoring said work to the condition contemplated in said project, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs, or upon demand by the Agency, to replace any such material and to repair said work completely without cost to the Agency so that said work will function successfully as originally contemplated.

The Agency shall have the unqualified option to make any needed replacements or repairs itself or to have such replacements or repairs done by the undersigned. In the event the Agency elects to have said work performed by the undersigned, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from NCTD. If the undersigned shall fail or refuse to comply with its obligations under this guaranty, the Agency shall be entitled to all costs and expenses, including attorneys' fees, reasonably incurred by reason of the said failure or refusal.

Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

**COMPRESSOR AND DRYER REPLACEMENT
EEO CERTIFICATE**

The Bidder hereby certifies that the company has _____ **OR** has not _____ been found, adjudicated, or determined to have violated any laws of Executive Orders relating to employment discrimination or affirmative action including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d); Executive Order 10925, 11114, or 11246; or the California Fair Employment and Housing Act (Government Code 12460 et seq.); by any Federal or California court or agency, including but not limited to the Equal Employment Opportunity Commission, the Office of Federal Contract compliance Programs, and the California Fair Employment and Housing Commission.

If yes, please explain the circumstance.

Official, legal name of Contractor or individual (Type or Print) offering the bid

Print Name: _____ Title: _____

Signed by: _____ Date: _____

**COMPRESSOR AND DRYER REPLACEMENT
FALSE CLAIMS CERTIFICATION**

**BIDDER'S CERTIFICATION OF COMPLIANCE
WITH
LAWS RELATING TO
FALSE CLAIMS**

I hereby certify that if awarded the Agreement of which this certificate shall be made a part of, Contractor will not violate any provisions of the False Claims Act or any other applicable federal or state laws and regulations relating to the filing of false claims against a public agency, including laws and regulations hereinafter enacted. I additionally certify that in the event it is determined that Contractor has violated the False Claims Act that such violation shall be grounds for, among other things, debarment pursuant to the policies established by Federal, State, or local law.

Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

**COMPRESSOR AND DRYER REPLACEMENT
DISADVANTAGED BUSINESS ENTERPRISE (DBE)/ SMALL BUSINESS (SB)
PROGRAM INFORMATION**

(TO BE COMPLETED BY THE PRIME CONTRACTOR)

This form must be completed by the Contractor submitting the bid and for each Subcontractor listed in the "List of Subcontractors" Form. **FAILURE TO SUBMIT A COMPLETED FORM FOR THE PRIME AND ALL SUBCONTRACTORS MAY RESULT IN A NON-RESPONSIVE DETERMINATION.**

Regardless of your DBE status, Section "A" must be completed, the form signed and provided with your bid/proposal:

A. Please provide the following information:

1. Name of Contractor: _____
2. Address: _____
3. Contact Name: _____
4. Phone: _____ Fax: _____ E-mail: _____
5. Type of Work Performed (list NAICS Codes if known): _____

6. Date business started (formed, incorporated, began operations, etc.): _____ (MM/DD/YY)

7. Contractor's gross receipts for last year* (check one):

- ☐ Less than \$1,000,000 ☐ \$1,000,001 - \$5,000,000 ☐ \$5,000,001 - \$10,000,000
☐ \$10,000,001 - \$15,000,000 ☐ \$15,000,001 - \$23,980,000 ☐ \$23,980,001 - \$50,000,000
☐ \$23,980,001 - \$50,000,000 ☐ \$50,000,001 - \$100,000,000 ☐ More than \$100,000,000

* The Department of Transportation annually decides the amount of average annual gross receipts a firm must have to be eligible to become a DBE. Currently, if your company in the previous three fiscal years has had average annual gross receipts below \$23,980,000, your company may be eligible for DBE Certification.

8. Is your company a certified Disadvantaged Business Enterprise (DBE) and/or Small Business (SB)? ☐ Yes ☐ No

a. If yes, check the applicable box and state the corresponding certification number:

☐ DBE _____ ☐ SB _____

9. Do you want NCTD to provide your company with additional guidance on how to become DBE or SB certified? ☐ Yes ☐ No

B. If you selected your business is a DBE and/or SB above, please attach the applicable certification to this page.

NCTD accepts certification from only the agencies listed at:

<https://dot.ca.gov/-/media/dot-media/programs/civil-rights/documents/dbe/cucp-roster-of-certifying-agencies-1-2021-a11y.pdf>

Caltrans Certified DBE Contractors can be found at the following website:

<https://californiaucp.dbesystem.com/>

Certified California Dept. of General Services Small Business can be found at the following website:

<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

Name: _____

Title: _____

Signature: _____

Date: _____

**COMPRESSOR AND DRYER REPLACEMENT
DISADVANTAGED BUSINESS ENTERPRISE (DBE)/ SMALL BUSINESS (SB)
PROGRAM INFORMATION**

(TO BE COMPLETED BY THE SUBCONTRACTOR)

This form must be completed by the Contractor submitting the bid and for each Subcontractor listed in the "List of Subcontractors" Form. **FAILURE TO SUBMIT A COMPLETED FORM FOR THE PRIME AND ALL SUBCONTRACTORS MAY RESULT IN A NON-RESPONSIVE DETERMINATION.**

Regardless of your DBE status, Section "A" must be completed, and the form signed and provided with your bid/proposal:

A. Please provide the following information:

1. Name of Contractor: _____
2. Address: _____
3. Contact Name: _____
4. Phone: _____ Fax: _____ E-mail: _____
5. Type of Work Performed (list NAICS Codes if known): _____
6. Date business started (formed, incorporated, began operations, etc.): _____ (MM/DD/YY)
7. Contractor's gross receipts for last year* (check one):
☐ Less than \$1,000,000 ☐ \$1,000,001 - \$5,000,000 ☐ \$5,000,001 - \$10,000,000
☐ \$10,000,001 - \$15,000,000 ☐ \$15,000,001 - \$23,980,000 ☐ \$23,980,001 - \$50,000,000
☐ \$23,980,001 - \$50,000,000 ☐ \$50,000,001 - \$100,000,000 ☐ More than \$100,000,000

* The Department of Transportation annually decides the amount of average annual gross receipts a firm must have to be eligible to become a DBE. Currently, if your company in the previous three fiscal years has had average annual gross receipts below \$23,980,000, your company may be eligible for DBE Certification.
8. Is your company a certified Disadvantaged Business Enterprise (DBE) and/or Small Business (SB)? ☐ Yes ☐ No
 - a. If yes, check the applicable box and state the corresponding certification number:
☐ DBE _____ ☐ SB _____ ☐ N/A
9. Do you want NCTD to provide your company with additional guidance on how to become DBE or SB certified? ☐ Yes ☐ No

B. If you selected your business is a DBE and/or SB above, please attach the applicable certification to this page.

NCTD accepts certification from only the agencies listed at:

<https://dot.ca.gov/-/media/dot-media/programs/civil-rights/documents/dbe/cucp-roster-of-certifying-agencies-1-2021-a11y.pdf>

Caltrans Certified DBE Contractors can be found at the following website:

<https://californiaucp.dbesystem.com/>

Certified California Dept. of General Services Small Business can be found at the following website:

<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

Name: _____

Title: _____

Signature: _____

Date: _____

REFERENCE CHECK FORM – THREE (3) REFERENCES REQUIRED

COMPRESSOR AND DRYER REPLACEMENT

IFB # _____ Name of Firm: _____

Note: To be completed and signed by the reference source

CLIENT/CONTACT INFORMATION:

COMPANY NAME: _____ ADDRESS: _____

CONTACT NAME AND TITLE: _____

PHONE NUMBER: _____ EMAIL: _____

1. Quality of Firms work with no more than two (2) project examples:

2. Degree of Firms cooperation with team (internal and external)

3. Project and Deliverables On time and within Budget?

4. % of change orders?

5. Any Problems? Provide example

6. Overall rating – “1 through 10 with 10 being the highest rating” with rationale as to rating

7. Would you work with contractor again? Yes/ No – rationale as to why

Signed: _____ Date: _____

Title: _____

**COMPRESSOR AND DRYER REPLACEMENT
NON-COLLUSION DECLARATION**

The undersigned hereby declares:

I am the _____ of _____ ("Contractor"), the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Bidder. All statements contained in the bid are true. The Bidder has not, directly or indirectly, submitted its bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Official, legal name of Contractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

**COMPRESSOR AND DRYER REPLACEMENT
BID SCHEDULE**

I/WE AGREE TO FURNISH FULLY-BURDENED RATES INCLUSIVE OF ALL LABOR, EQUIPMENT AND MATERIALS AND PERFORM ALL THE WORK REQUIRED FOR THE COMPRESSOR AND DRYER REPLACEMENT PROJECT, FOR NORTH COUNTY TRANSIT DISTRICT, IN ACCORDANCE WITH THE DOCUMENTS PREPARED THEREFORE, FOR THE PRICES LISTED BELOW:

Line Item	Description	Quantity	UOM	Unit Cost	Total
BASE:					
1	Mobilization	1	LS	\$	\$
2	Rotary Screw Air Compressor	2	EA	\$	\$
3	Start-Up/Training Cost	1	LS	\$	\$
4	200 SCFM Capacity Air Dryer with Air Filters	2	EA	\$	\$
5	Labor	1	LS	\$	\$
6	Sales or Use Tax for material (8.25%)	1	LS	\$	\$
Total Base:					\$
OPTION:					
7	Mobilization	1	LS	\$	\$
8	500 Gallon Storage Tank	4	EA	\$	\$
9	Labor	1	LS	\$	\$
10	Sales or Use Tax for material (8.25%)	1	LS	\$	\$
Total Option:					\$
Grand Total (Base+ Option):					\$

NOTES:

- Grand Total Bid Price from this page is to be inserted in the first paragraph of the Bid Declaration Form in the appropriate space.
- Contractor shall submit unit cost for each above line items as requested.

Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

COMPRESSOR AND DRYER REPLACEMENT NOTICE REGARDING DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS AND INSTRUCTIONS

NCTD has established a DBE goal for this Agreement of 0%.

I. DBE PARTICIPATION GENERAL INFORMATION

In conformance with 49 CFR 26, NCTD is required to implement a minority-conscious component for its DBE program. The minority-conscious goal established by NCTD for the Agreement, or if applicable, each contract Task Order, will be based on an analysis of available subcontracting opportunities and the availability of DBEs within the NCTD market area. In the event of any conflicts or inconsistencies between the CFR and the NCTD DBE Program with respect to DOT-assisted contracts, the CFR shall prevail. It is NCTD policy to provide disadvantaged, minority, and women-owned business enterprises, as defined in 49 CFR 26, an equitable opportunity to participate in all contracting opportunities. NCTD has entered into agreements with FTA, FHWA, and FRA regarding its DBE programs, which include minority and women-owned business enterprises. NCTD is required to administer contracts, contractor selection, and all related procurement activities without regard to race, color, religion, disability, political beliefs, age, national origin, gender, sexual orientation, veteran status, or cultural background. Accordingly, no firm or individual shall be denied the opportunity to compete for NCTD contracts by reasons so stated or implied. DBEs and other small businesses are strongly encouraged to participate in the performance of agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by DBEs in DOT Financial Assistance Programs").

Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this Agreement and should take all necessary and reasonable steps for this assurance.

Contractor is encouraged to use services offered by financial institutions owned and controlled by DBEs. For more information, including a list of Minority Owned Banks, visit the United States Department of Treasury's Financial Management Service's website at www.fms.treas.gov/mbdp/index.html. Please be advised that the utilization of Minority Owned Banks is encouraged but will not be counted as participation toward achievement of a DBE goal.

The Agreement is subject to 49 CFR 26.13(b) which states:

"The contractor [Contractor], subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the contractor [Contractor or subcontractor] to carry out these requirements is a material breach of this Agreement [Agreement], which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments
- Assessing sanctions
- Liquidated damages
- Disqualifying the contractor from future bidding as non-responsible."

Information regarding the NCTD DBE can be found at: [Doing Business With NCTD | NCTD - North County Transit District \(gonctd.com\)](http://gonctd.com)

A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP). Please note that DBE goals must be met using firms certified as DBE by the state of California. SBE, Women-Owned Business Enterprise, Veteran-owned, and Minority Business Enterprise certifications are not equivalent to DBE certification.

A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

COMPRESSOR AND DRYER REPLACEMENT

Unless Contractor has entered into a joint venture with a DBE, Contractor will be required to document at least one of the following:

- Contractor is a DBE and will meet the DBE goal by performing work with its own forces.
- Contractor will meet the goal through work performed by DBE subcontractors, suppliers, or trucking companies.
- Contractor made adequate Good Faith Efforts (GFE) to meet the goal.

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

A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm 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.

Contractor shall list only one subcontractor for each category of work described in its proposal or bid. All DBE subcontractors should be listed in the cost proposal or bid and list of subcontractors (Subcontractor List). If Contractor is a certified DBE and is eligible to claim all of the work in the Agreement or an applicable Task Order, its participation will count as DBE participation except that portion of the work to be performed by non-DBE subcontractors. Contractor shall include in each subcontract the Contractor signs with a subcontractor, language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

NCTD reserves the right to withhold payment to the Contractor in an amount up to \$10,000 in order to enforce the DBE provisions of the Agreement or to use other remedies described in this Agreement. NCTD is not obligated, however, to make such a deduction or to provide notice thereof. Payment of any withheld funds shall not be made on the Agreement, or if applicable, Task Order, until such time as Contractor submits sufficient documentation demonstrating achievement of the commitment or until such time as the commitment is modified or waived by NCTD or a sanction amount is agreed to by the parties. Contractor shall include the provisions in this subsection in each subcontract it signs with a subcontractor.

NCTD also may conduct post-award monitoring of Contractor's compliance with the DBE provisions of the Agreement. For example, NCTD may ask to review Contractor's subcontracts to ensure that DBEs have done the work for which credit was claimed. Contractor shall cooperate with NCTD requests for assistance with post-award monitoring. Failure by the Contractor to cooperate may be considered a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as NCTD deems appropriate.

Failure to meet a DBE Commitment due to unilateral decisions by Contractor will be considered a material breach of contract. Contractor must communicate with NCTD promptly if it believes changes in work approved by NCTD merit modification of the commitment. Contractor shall notify the NCTD Project Manager in Contractor's monthly project status reports of any anticipated problems with Contractor meeting its commitment.

II. RESOURCES

NCTD participates as a Non-Certifying Member in the CUCP. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification at (916) 324-1700 for assistance.

Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <https://dot.ca.gov/programs/civil-rights/dbe-search>

COMPRESSOR AND DRYER REPLACEMENT

- Click on Access the DBE Query Form
- Click on Start DBE Firms Query
- Searches can be performed by one or more criteria
- Follow instructions on the screen

III. DBE DIRECTORY

If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered by calling (916) 263-0822 or by writing to:
California Department of Transportation
Publication Distribution Unit
1900 Royal Oaks Drive
Sacramento, CA 95815-3800

IV. DBE CREDITING PROVISIONS

Materials or supplies purchased from DBE count towards DBE credit under the following conditions:

- If the materials or supplies are obtained from a DBE Manufacturer, count 100 percent of the cost of the materials or supplies. A DBE Manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- If the materials or supplies purchased from a DBE Regular Dealer, count 60 percent of the cost of the materials or supplies. A DBE Regular Dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, or if applicable, Task Order, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating or maintaining a place of business provided in this section.
- If a dealer both owns and operates distribution equipment needed for the Work, any supplementing of Regular Dealers' own distribution equipment shall be, by a long-term lease agreement and not on an ad hoc or agreement-by-agreement basis. Packagers, brokers, Manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE Regular Dealers within the meaning of this section.
- Materials or supplies purchased from a DBE, which is neither a Manufacturer nor a Regular Dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required for the Work, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

For DBE trucking companies: credit for DBE will count towards DBE credit under the following conditions:

COMPRESSOR AND DRYER REPLACEMENT

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible under the Agreement, or if applicable, Task Order, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.
- The DBE receives credit for the total value of the transportation services it provides on the Agreement, or if applicable, Task Order, using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. A DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement, or if applicable, Task Order.
- The DBE may also lease trucks from a non-DBE firm, including an owner-operator. A 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. A DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE. If Contractor chooses this approach to meet a NCTD goal, it must notify NCTD in advance and obtain concurrence from NCTD since NCTD will be required to obtain written consent from the appropriate DOT operating administration.
- For the purposes of this Section, a lease must indicate that the DBE has exclusive use 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, as 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.

V. DBE CERTIFICATION

NCTD will accept DBE certification from the certifying member agencies, which certify eligibility of DBEs in accordance with 49 CFR 26, under the CUCP or another state's certification program pursuant to the interstate certification process described in 49 CFR 26.85. Listings of certifying member agencies are available in the Caltrans Office of Civil Rights website at: <https://dot.ca.gov/programs/civil-rights/dbe-search>. A firm that is certified DBE by another state at the time of proposal submission, must be certified as DBE by the state of California by the time of execution of the Agreement, or if applicable, Task Order.

The CUCP database includes the DBEs certified from all certifying agencies participating in the CUCP. If Contractor is looking for a certified DBE firm or wants to be sure the firm it plans to subcontract with is certified, Contractor may perform a query in the CUCP database by going to: <https://dot.ca.gov/programs/civil-rights/dbe-search>. If Contractor believes a firm is certified that cannot be located on the database, it may contact the Caltrans Office of Civil Rights Certification Unit at (916) 324-1700 for assistance.

If a DBE subcontractor is decertified during the term of the Agreement, or if applicable, Task Order, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the term of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to NCTD. A DBE Certification Status Change Form indicating the DBE's existing certification status, shall be signed and certified correct by Contractor and shall be furnished to NCTD within 90 days from the change in certification status.

VI. COMMERCIALLY USEFUL FUNCTION STANDARDS

COMPRESSOR AND DRYER REPLACEMENT

To be credited, a DBE must perform a commercially useful function in and be utilized for work in the North American Industry Classification System (NAICS) code for which they are CUCP certified. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, or if applicable, Task Order, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, NCTD will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement, or if applicable, Task Order, is commensurate with the work it is actually performed and the DBE credit claimed for its performance of the work, and other relevant factors.

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. In determining whether a DBE is such an extra participant, NCTD must examine similar transactions, particularly those in which DBEs do not participate. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, NCTD will presume that it is not performing a commercially useful function. When a DBE is presumed not to be performing a commercially useful function as provided in the previous paragraph, the DBE may present evidence to rebut this presumption. NCTD may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

VII. DBE “FRONTS” AND FRAUDS

Only legitimate DBEs are eligible to participate in any federally funded contract. Therefore, Contractor is cautioned against knowingly and willingly using “fronts” or doing business with DBEs in a manner, which could compromise the DBE’s continued eligibility and DBE participation credit. 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, United States DOT toll free hotline at (800) 424-9071.

VIII. SUBSTITUTION

DBEs must perform work or supply materials as listed in the Proposer DBE Commitment form and as shown in the Exhibit entitled “Contractor Contract DBE Commitment Information”. Contractor shall not terminate a DBE listed subcontractor for convenience and perform the work with its own forces or obtain materials from other sources without prior written authorization from NCTD.

NCTD will grant authorization to substitute other forces or sources of materials if Contractor submits a request to NCTD that establishes any of the following justifications:

- Listed DBE fails or refuses to execute a written contract based on plans and specifications for the Work.
- Contractor stipulates that a bond is a condition of executing the subcontract and the listed DBE fails to meet the bond requirements.
- Work requires a license and listed DBE does not have a valid license.
- Listed DBE fails or refuses to perform the work or furnish the listed materials.
- Listed DBE's work is unsatisfactory and not in compliance with its contract.
- Listed DBE delays or disrupts the progress of the work.
- Listed DBE becomes bankrupt or insolvent.

COMPRESSOR AND DRYER REPLACEMENT

Contractor will need to follow the procedures below to substitute DBE subcontractors so that the DBE commitment can be met.

Before requesting permission from NCTD for a substitution, Contractor must give notice in writing to the DBE subcontractor, with a copy to the NCTD Disadvantaged Business Enterprise Liaison Officer (DBELO), of its intent to request to terminate and/or substitute the DBE subcontractor. The notice sent to the DBE subcontractor must include the reason the Contractor is requesting the substitution.

Contractor must give the DBE subcontractor five days to respond to Contractor's notice. The DBE's response should advise the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract. The response should include information regarding why the substitution should not be approved. Contractor shall provide the NCTD DBELO with a copy of the DBE subcontractor's response, if any, when submitting its request for substitution.

The proposed new subcontractor must be certified to perform a commercially useful function for one or more of the types of work in the scope of work. NCTD can assist with locating DBE firms.

Contractor must check the CUCP database to ensure the proposed firm is DBE certified for the associated categories and types of work (identified by the NAICS codes) in the scope of work. If, even after seeking assistance from NCTD in locating DBE firms, Contractor cannot locate DBE firms that are ready, willing and able to do the work, Contractor shall provide NCTD or its designee with GFE documentation regarding its efforts for the NCTD contract file that will justify waiver of all or a portion of the DBE goal/commitment. NCTD or a designee will review and determine if Contractor's submitted GFE documentation is adequate. Contractor shall provide NCTD with the qualifications and fee information that was used for selection.

IX. DBE REPORTING

If Contractor or any of its subcontractors, suppliers, or trucking companies are DBE-certified, Contractor must either have completed a DBE Commitment Form and submitted it with its proposal or bid, or if this Agreement is awarded without a competitive procurement, Contractor must execute the DBE Commitment Form at the time it executes the Agreement. Contractor shall report subcontractor payment details for any DBE subcontractor or supplier to NCTD using PlanetBids by the 15th of each month. Subcontractors with lower tier DBE subcontractors shall report payment details to NCTD using PlanetBids within 15 days from the date payment is received from Contractor or higher tier subcontractor. Contractor is responsible for ensuring subcontractors are verifying payments through PlanetBids on a timely basis and shall promptly notify delinquent subcontractors to verify payments. In addition, Contractor shall be required to submit a document entitled "Final Utilization Report" ("the FUR") within 90 days after the date all Work is completed.

COMPRESSOR AND DRYER REPLACEMENT DBE COMMITMENT FORM

Used to show commitment at time of Agreement, or if applicable, Task Order, execution. All information on this form must be typed, excluding signatures.

1. Local Agency: NCTD 2. Agreement or Task Order DBE Goal %: _____
 3. Project Description: _____
 4. Project Location: _____
 5. Contractor's Name: _____ 6. Prime is Certified DBE: ☐ 7. Total Award Amount: _____
 8. Total Dollar Amount for ALL Subcontractors: _____ 9. Total Number of ALL Subcontractors: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
NCTD to Complete this Section 20. NCTD Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____ NCTD certifies that all DBE certifications are valid and information on this form is complete and accurate. 23. NCTD Representative's Signature _____ 24. Date _____ 25. NCTD Representative's Name _____ 26. Phone _____ 27. NCTD Representative's Title _____		14. TOTAL DOLLAR AMOUNT OF CLAIMED DBE PARTICIPATION \$ _____ 15. TOTAL PERCENT OF CLAIMED DBE PARTICIPATION ON AGREEMENT % _____ IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 15. Preparer's Signature _____ 16. Date _____ 17. Preparer's Name _____ 18. Phone _____ 19. Preparer's Title _____	

**COMPRESSOR AND DRYER REPLACEMENT
INSTRUCTIONS – DBE COMMITMENT FORM
CONTRACTOR SECTION**

1. Local Agency – NCTD name entered as agency that is funding the Agreement or Task Order.
2. Contract DBE Goal - Enter the contract or Task Order DBE goal percentage set by NCTD.
3. Project Description - Enter the project description.
4. Project Location - Enter the project location.
5. Contractor's Name - Enter the Contractor's firm name.
6. Prime Certified DBE - Check box if prime Contractor is a certified DBE.
7. Total Contract Award Amount - Enter the total Agreement or Task Order award dollar amount for the prime Contractor.
8. Total Dollar Amount for ALL Subcontractors – Enter the total dollar amount for all subcontracted Contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime Contractor information in this count.
9. Total number of ALL subcontractors – Enter the total number of all subcontracted Contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime Contractor information in this count.
10. Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime Contractor's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE.
11. DBE Certification Number - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date proposals are due to NCTD.
12. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted Contractors. Also, enter the prime Contractor's name and phone number, if the prime is a DBE.
13. DBE Dollar Amount - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime Contractor if the prime is a DBE.
14. Total Claimed DBE Participation - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. %: Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than the Contract/Task Order DBE Goal, an adequately documented Good Faith Effort (GFE) is required.
15. Preparer's Signature - The person completing the DBE commitment form on behalf of the Contractor's firm must sign their name.
16. Date - Enter the date the DBE commitment form is signed by the Contractor's preparer.
17. Preparer's Name - Enter the name of the person preparing and signing the Contractor's DBE commitment form.
18. Phone - Enter the area code and phone number of the person signing the Contractor's DBE commitment form.
19. Preparer's Title - Enter the position/title of the person signing the Contractor's DBE commitment form.

NCTD SECTION

20. NCTD Contract Number - Enter the NCTD contract and/or Task Order number.
21. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
22. Contract Execution Date - Enter the date the Agreement was executed.
23. NCTD Representative's Signature - The person completing this section of the form for NCTD must sign their name to certify that the information in this and the Contractor Section of this form is complete and accurate.
24. Date - Enter the date the form is signed by the NCTD Representative.
25. NCTD Representative's Name - Enter the name of the NCTD Representative certifying the Contractor's DBE commitment form.
26. Phone - Enter the area code and phone number of the person signing the Contractor's DBE commitment form.
27. NCTD Representative Title - Enter the position/title of the NCTD Representative certifying the Contractor's DBE Commitment form.

**COMPRESSOR AND DRYER REPLACEMENT
FAITHFUL PERFORMANCE BOND – (100% of Contract Price)**

KNOW ALL MEN BY THESE PRESENTS:

That we, _____ hereinafter referred to as "Contractor," as principal, and _____ as Surety, are held and Contractually bound unto the North County Transit District, State of California, in the sum of _____ dollars (\$ _____), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, jointly and severally, Contractually by these presents.

WHEREAS, said Contractor has been awarded and is about to enter into contract with the North County Transit District for: _____, according to the bonding requirements found in IFB 33314 at _____, _____, and is required under the terms of the Contract to give this bond in connection with the execution of said contract.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounded Contractor, or their or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform, the covenants, conditions, and agreements in the said contract and any alteration thereof made as therein provided, on its or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the North County Transit District, its officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise, It shall be and remain in full force and virtue. And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligation on this bond, it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract, or to the work, or to the specifications. In the event suit is brought upon this bond by the North County Transit District and judgment is recovered, the Surety shall pay all litigation expenses incurred by the North County Transit District in such suit, including attorneys' fees, court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Contractor, as principal, and Surety above named, on the _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

WITNESS our hands this _____ day of _____, 20____. (Seal)

Official, legal name of bidding Contractor or individual
(Type or Print)

Surety

Signed by:

Signed by:

Type or Print Name

Type or Print Name and Title

Type or Print Title

Approved

*NOTE: Appropriate Notarial Acknowledgements of Execution by Contractor and Surety must be completed and attached. The Surety's Power of Attorney must also be attached.

**COMPRESSOR AND DRYER REPLACEMENT
PAYMENT BOND - (100% of Contract Price)**

KNOW ALL MEN BY THESE PRESENTS:

That we, _____ hereinafter referred to as "Contractor," as principal, and _____ as Surety, are held and Contractually bound unto the North County Transit District, State of California, in the sum of _____ dollars (\$ _____), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, jointly and severally, Contractually by these presents.

WHEREAS, said Contractor has been awarded and is about to enter into contract with said North County Transit District for _____ according to bonding requirements found in IFB 33314 and is required under the terms of the Contract to give this bond in connection with the execution of said contract providing that if said Contractor or any of its Subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Contractor, its Subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 3181 of the California Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the Contractor and its Subcontractors pursuant to Section 18663 of the California Revenue and Taxation Code, with respect to such work and labor the surety or sureties will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the North County Transit District in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the North County Transit District and original Contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the California Civil Code, and has not been paid the full amount of its claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed unoriginal thereof, have been duly executed by the Contractor, as principal, and Surety above named, on the _____ day of _____ 20____ the name and

COMPRESSOR AND DRYER REPLACEMENT

corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

WITNESS our hands this _____ day of _____, 20____. (Seal)

Official, legal name of bidding Contractor or individual
(Type or Print)

Surety

Signed by:

Signed by:

Type or Print Name

Type or Print Name and Title

Type or Print Title

Approved

*NOTE: Appropriate Notarial Acknowledgements of Execution by Contractor and Surety must be completed and attached. The Surety's Power of Attorney must also be attached.

**COMPRESSOR AND DRYER REPLACEMENT
SECTION 07: SPECIAL CONDITIONS**

FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES

It is the responsibility of the Contractor to ensure that all clauses applicable to the Work of the Agreement are adhered to by the Contractor and its subcontractors when applicable.

Sec.	Contract Clause	APPLICABILITY TO TYPE OF PROCUREMENT
		Construction
1	No Federal Government Obligation to Third Parties by Use of a Disclaimer	All
2	Program Fraud and False or Fraudulent Statements and Related Acts	All
3	Access to Records	All
4	Federal Changes	All
5	Civil Rights (EEO, Title VI & ADA)	All
6	Special DOL EEO clause for construction projects	>10K
7	Disadvantaged Business Enterprises (DBE) and Prompt Payment	All
8	Incorporation of FTA Terms	All
9	Termination Provisions	> 10K
10	Debarment and Suspension	> 25K
11	Buy America	>\$150,000
12	Provisions for Resolution of Disputes, Breaches, and Other Litigation	> 100K
13	Lobbying	> 100K
14	Clean Air	> 100K
15	Clean Water	> 100K
16	Cargo Preference	All
17	Fly America	All
18	Davis-Bacon and Copeland Anti-Kickback Acts	> \$2000
19	Contract Work Hours and Safety Standards Act	>\$100K
20	Bonding	Construction > 100K (NCTD > \$10K)
21	Seismic Safety	New buildings & additions
22	Transit Employee Protective Agreements	-
23	Energy Conservation	All
24	Recycled Products	Value > 10K In Fiscal Year
25	ADA Access	All
26	Safe Operation of Motor Vehicles	All
27	Privacy Act	All
28	Metric Requirements	All
29	Veterans Employment	Capital Projects

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30	Notice of Legal Matters that Affect the Federal Government	>\$25,000
31	Federal Tax Liability and Recent Felony Convictions	All
32	Promoting Free Speech and Religious Liberty	All

COMPRESSOR AND DRYER REPLACEMENT

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES BY USE OF A DISCLAIMER

Applicability to Contracts: These requirements are applicable to all contracts.

Flow down Requirements: This section flows down to all levels to clarify, to all parties to the Agreement and subcontractors, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

(1) NCTD and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to NCTD, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify any subcontractor who will be subject to its provisions.

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

31 U.S.C. 3801 et seq.

49 CFR Part 31

18 U.S.C. 1001

49 U.S.C. 5307

Applicability to Contracts: These requirements are applicable to all contracts.

Flow down Requirements: These requirements flow down to Contractor and its subcontractors who make, present, or submit covered claims and statements.

(1) 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 Agreement. Upon execution of the underlying Agreement, the Contractor certifies the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) 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 originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two (2) clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify any subcontractor who will be subject to the provisions.

3. ACCESS TO RECORDS

49 U.S.C. 5325

18 CFR 18.36(i)

49 CFR 633.17

Applicability to Contracts: These requirements are applicable to all contracts.

Flow down Requirements: FTA does not require the inclusion of these requirements in subcontracts.

The following access to records access requirements apply to this Agreement:

(1) The Contractor agrees to provide NCTD, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or their authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

COMPRESSOR AND DRYER REPLACEMENT

(2) Where NCTD or a sub-grantee of NCTD in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) through other than competitive bidding, the Contractor shall make available records related to the contract to NCTD, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(3) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(4) The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three (3) 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 Contractor agrees to maintain same until NCTD, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

(5) FTA does not require the inclusion of these requirements in subcontracts.

4. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts: The section applies to all contracts.

Flow down Requirements: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

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

5. CIVIL RIGHTS (EEO, TITLE VI & ADA)

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts: These requirements are applicable to all contracts.

Flow down Requirements: The Civil Rights requirements flow down to all third-party subcontractors and their subcontracts at every tier.

(1) The Contractor will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:

- i. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332, California Civil Code § 51, California Government Code § 11135
- ii. 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112, California Government Code § 12900 – 12996
- iii. 49 U.S.C. § 5325 (k).
- iv. Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.

(2) The following requirements apply to a contract awarded as a result of this solicitation:

- i. **Nondiscrimination** – In accordance with U.S. Department of Transportation (DOT), Federal, and State of California regulations 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102, 42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C. § 5307 ©(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients.", DOT Order to Address Environmental Justice in Minority Populations

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and Low-Income Populations, Executive Order No. 13166 and DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005), the Unruh Civil Rights Act, California Civil Code § 51, and California Government Code § 11135, the Contractor agrees that it will comply with the identified Federal and State of California laws and regulations, pertaining to NCTD programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal and State of California statutes and/or regulations that may be signed into law or promulgated.

ii. Equal Employment Opportunity – The following equal employment opportunity requirements apply to the Agreement:

(a.) Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender Expression – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 49 U.S.C. § 5332, FTA Circular 4704.1, "Equal Employment Program Guidelines for Grant Recipients", and , the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, including "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Fair Employment and Housing Act, California Government Code Sections 12900 – 12996 and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Bidder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.

(b.) Sex – The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1975, as amended, 20 U.S.C. § 1681, and 49 CFR part 25. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.

(c.) Age - The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, 45 CFR part 90, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and Equal Employment Opportunity Commission (EEOC) implementing regulations 29 CFR part 1625. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.

(d.) Disabilities – The Contractor agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(d), 36 CFR part 1194, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, 49 CFR parts 27, 37, 38, and 39, and FTA Circular 4710.1, "Americans with Disabilities Act: Guidance". In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.

(3) The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

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6. SPECIAL DOL EQUAL EMPLOYMENT OPORTUNITY CLAUSE FOR CONSTRUCTION PROJECTS 41 CFR Part 60

Applicability to Contracts: These requirements are applicable to all contracts.

Flow Down Requirements: These EEO requirements flow down to all third-party subcontractors and their subcontracts at every tier.

During the performance of this contract, the Contractor agrees as follows

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND PROMPT PAYMENT

49 CFR Part 26

Section 1101(b) of MAP-21 (23 U.S.C. § 101 note)

Applicability to Contracts: These requirements are applicable to all contracts.

Flow Down Requirements: These DBE requirements flow down to all third-party subcontractors and their subcontracts at every tier.

- (1) NCTD encourages DBE participation in this solicitation. In order to qualify as a DBE, a Contractor, or a Contractor's subcontractor, must be certified as a DBE under 49 CFR Part 26. As a recipient of Federal funds, NCTD must comply, and ensure that its Contractor(s) comply with 49 CFR Part 26 and Section 1101(b) of the Fixing America's Surface Transportation Act (FAST Act).
- (2) DBE Requirements/DBE Obligation:
 - i. The Agreement to be awarded may be funded in part by the U.S. Department of Transportation (DOT) FTA. As a condition of financial assistance agreements between NCTD and the U.S. DOT, NCTD has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
 - ii. The Agreement to be awarded may be funded in part by the U.S. DOT FTA. As a condition of financial assistance agreements between NCTD and the U.S. DOT, NCTD has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
 - iii. Pursuant to directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving v. Washington State Department of Transportation* and the FTA's Guidance (Docket No. FTA-2006-24063; dated March 23, 2006), NCTD will utilize race-conscious and race-neutral measures to meet its overall DBE goals and objectives. Contractors are encouraged to afford small businesses, including DBEs, an equitable opportunity to compete for and perform on a contract resulting from this solicitation.
 - iv. The Contractor, and any of its subcontractors, are to ensure that DBE as defined in 49 CFR Part 26 have equal opportunities to participate in the performance of NCTD contracts. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the equal opportunities to compete for and are awarded contracts. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
 - v. 1101(b) of the FAST Act extends the Federal statutory requirement that FTA make available at least 10 percent (10%) of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. NCTD and sub-recipients (Contractor and its subcontractors) of FTA-funding assists FTA in meeting this national goal. To receive FTA assistance, NCTD and sub-recipients (Contractor and its subcontractors) of FTA-funding must comply with applicable requirements of DOT regulations 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs".

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(3) DBE Financial Institutions

- i. The Contractor is to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage subcontractors to make use of these institutions also.
- ii. A list of Minority Owned Banks is on the Federal Reserve website at <http://federalreserve.gov/releases/mob/current/default.htm>. The Federal Reserve website is updated periodically.
- iii. The Contractor is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial.

(4) DBE Reporting and Certification

- i. Contractor shall utilize the PlanetBids "My Contracts" portal to report monthly subcontractor payment reports during the reporting month. Contractor shall ensure that their subcontractors are added into the PlanetBids "MyContracts" portal once the Agreement has been awarded. Prime contractors shall submit a monthly subcontractor payment report on the PlanetBids "MyContracts" portal by the 20th of each month following the end of the reporting month and should reflect all payments made to subcontractor(s) through the last day of the previous month, even if the subcontractor(s) did not perform any work. As Federal law requires that NCTD have proof of payment to a DBE subcontractor, the subcontractor must verify payments have been received in PlanetBids. Monthly reporting requires the submittal of information in PlanetBids as described in the section of this Agreement entitled "Prompt Payment."
- ii. Failure to submit required information to PlanetBids will result in delayed payment. Failure to submit required information on PlanetBids in a timely manner also may result in NCTD withholding up to \$10,000 per invoice from Contractor.
- iii. In order for the Contractor to submit sufficient reporting it must verify that subcontractors' DBE certification is current at time of payment. Certified Contractors can be found at the State of California web site: [Caltrans - Disadvantaged Business Enterprise System \(dbesystem.com\)](http://Caltrans - Disadvantaged Business Enterprise System (dbesystem.com))

(5) DBE Contract Assurance (49 CFR 26.13)

- i. NCTD does not discriminate on the basis of race, color, national origin, or sex 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. NCTD takes all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts. NCTD's DBE Program as required by 49 CFR Part 26 and as approved by U.S. DOT will be incorporated by reference into the Agreement resulting from this solicitation.
- ii. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted procurements and contracts of products and services. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
 - a. Withholding monthly progress payments;
 - b. Assessing sanctions;
 - c. Liquidated damages; and/or
 - d. Disqualifying the Contractor from future bidding as non-responsible.

(6) DBE Prompt Payment (49 CFR 26.29)

- i. See sections of the solicitation and Agreement concerning Prompt Payment.
- ii. Failure to comply with these provisions or delay in payment without prior written approval from NCTD will constitute noncompliance, which will result in appropriate administrative sanctions,

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including, but not limited to a penalty of 2% of the amount due per month for every month that payment is not made

(7) Termination and/or Substitution of DBE Subcontractors (49 CFR 26.53)

- i. Termination and/or substitution of a DBE subcontractor must be done in accordance with NCTD's DBE Program and 49 CFR 26.53. Pursuant to 49 CFR 26.53(f)(1)(i) a prime contractor shall not substitute or terminate a DBE subcontractor listed in the original bid without NCTD's prior written consent. NCTD will evaluate all requests in strict accordance with NCTD's DBE Program, and all applicable laws rules and regulations including 49 CFR 26.53(f)(1)(i) the Subletting and Subcontracting Fair practices Act (Chapter 2 [commencing at Section 4100], Division 5, Title 1 of the Public Contract Code of the State of California). Substitution or termination includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE contractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(8) Civil Rights Policy Statements

- i. NCTD's DBE Policy Statement for its FTA approved DBE program is located at the following website: <https://gonctd.com/about-nctd/accountability/>

NCTD's Discrimination Complaint Procedures Policy Statement for its Title VI/Unruh program is located at the following website: <https://gonctd.com/accessibility/civil-rights/>

- i. NCTD's EEO Policy Statement for its EEO program is located at the following website: <https://gonctd.com/careers-nctd-north-county-transit-district/>

8. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

Applicability to Contracts: The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

Flow Down Requirements The incorporation of FTA terms has unlimited flow down.

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, are hereby incorporated by reference.

Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NCTD requests which would cause NCTD to be in violation of the FTA terms and conditions.

9. TERMINATION PROVISIONS

49 CFR Part 18

FTA Circular 4220.1F

See section entitled, "Termination," in the Agreement.

10. DEBARMENT AND SUSPENSION

49 CFR 18

2 CFR 1200

2 CFR 180

Executive Orders 12549 and 12689

31 U.S.C. 6101

Background and Applicability: In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by Contractor, a

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subcontractor, supplier, or its agent or representative in any transaction, if the Agreement is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the Agreement is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180). This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

These provisions apply to all NCTD contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services.

These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System (EPLS), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract.

Contractor or subcontractors who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Flow down Requirements: These requirements flow down to Contractor and subcontractors at all levels. This Agreement is a covered transaction for purposes of 49 CFR Part 18. As such, the Contractor is required to verify that none of the Contractor, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The Contractor is required to comply with 2 CFR 1200 and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by NCTD. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to NCTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements 2 CFR 180 while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

11. BUY AMERICA

49 U.S.C. 5323(j)

49 U.S.C. 5323(h)

49 CFR Part 661

Applicability to Contracts: The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down Requirements: The Buy America requirements flow down from NCTD to Contractor and Contractor is responsible for ensuring that lower tier contractors are in compliance.

Buy America - The Contractor agrees to comply with 49 U.S.C. 5323(j) as amended by MAP-21, 49 U.S.C. 5323(h), 49 CFR Part 661, and FAST Act (Pub. L. 114-94) which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and was amended by Section 3011 of the FAST Act (Pub. L. 114-94). Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a sixty percent (60%) domestic content for FY16 & FY17; sixty-five percent (65%) domestic content for FY18 & FY19; and seventy percent (70%) domestic content for FY20 & beyond.

General waivers for small purchases do not apply to Contractor's equipment purchases when Contractor's contract value exceeds \$150,000 in value. Contractor must submit to NCTD the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

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12. PROVISIONS FOR RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

49 CFR Part 18
FTA Circular 4220.1F

Applicability to Contracts: All contracts in excess of \$100,000 shall contain provisions or conditions that will allow for administrative, contractual, or legal remedies in instances where Contractor violates or breaches Agreement terms and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down Requirements: The Breaches and Dispute Resolutions requirements flow down to all tiers. Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NCTD. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the NCTD. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of NCTD shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by NCTD, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

Claims for Damages - Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the NCTD and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the NCTD is located.

Rights and Remedies - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by NCTD or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13. LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts: The Lobbying requirements apply to all contracts exceeding \$100,000.

Flow Down Requirements The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall also disclose 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 NCTD.

14. CLEAN AIR

42 U.S.C. 7401 – 7601(q)
40 CFR 15.61
49 CFR Part 18

Applicability to Contracts: The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

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Flow down Requirements: The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7601(q) et seq. The Contractor agrees to report each violation to NCTD and understands and agrees that NCTD, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. CLEAN WATER

33 U.S.C. 1251 - 1377

Applicability to Contracts: The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down Requirements: The Clean Water Act requirements flow down to Contractor and its contracts at every tier.

(a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. 1251 – 1377 et seq.

(b) The Contractor agrees to report each violation to NCTD and understands and agrees that NCTD will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368

(c) The Contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f – 300j-6.

(d) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

16. CARGO PREFERENCE

46 U.S.C. 55305

Applicability to Contracts: The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down Requirements: The Cargo Preference requirements apply to all Contractor and all subcontracts when the contract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Use of United States-Flag Vessels - Contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rate, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Cargoes Procured, Furnished, or Financed by the United States Government - (a) Definition - In this section, the term "privately-owned commercial vessel of the United States" does not include a vessel that, after September 21, 1961, was built or rebuilt outside the United States or documented under the laws of a foreign country, until the vessel has been documented under the laws of the United States for at least three (3) years.

(b) Minimum Tonnage.-When the United States Government procures, contracts for, or otherwise obtains for its own account, or furnishes to or for the account of a foreign country, organization, or persons without provision for reimbursement, any equipment, materials, or commodities, or provides financing in any way with Federal funds for the account of any persons unless otherwise exempted, within or without the United States, or advances funds or credits, or guarantees the convertibility of foreign currencies in connection with the furnishing or obtaining of the equipment, materials, or commodities, the appropriate agencies shall take steps necessary and practicable to ensure that at least fifty percent (50%) of the

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gross tonnage of the equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels is transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.

(c) Waivers -The President, the Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by-

(1) Declaring the existence of an emergency justifying a waiver; and

(2) Notifying the appropriate agencies of the waiver.

(d) Programs of Other Agencies -

(1) Each department or agency that has responsibility for a program under this section shall administer that program with respect to this section under regulations and guidance issued by the Secretary of Transportation. The Secretary, after consulting with the department or agency or organization or person involved, shall have the sole responsibility for determining if a program is subject to the requirements of this section.

(2) The Secretary-

(A) shall conduct an annual review of the administration of programs determined pursuant to paragraph

(1) as subject to the requirements of this section;

(B) may direct agencies to require the transportation on United States-flagged vessels of cargo shipments not otherwise subject to this section in equivalent amounts to cargo determined to have been shipped on foreign carriers in violation of this section;

(C) may impose on any person that violates this section, or a regulation prescribed under this section, a civil penalty of not more than \$25,000 for each violation willfully and knowingly committed, with each day of a continuing violation following the date of shipment to be a separate violation; and

(D) may take other measures as appropriate under the Federal Acquisition Regulations issued pursuant to section 25(c)(1) 1 of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1) 2 or contract with respect to each violation.

(e) Security of Government-Impelled Cargo -

(1) In order to ensure the safety of vessels and crewmembers transporting equipment, materials, or commodities under this section, the Secretary of Transportation shall direct each department or agency (except the Department of Defense), when responsible for the carriage of such equipment, materials, or commodities, to provide armed personnel aboard vessels of the United States carrying such equipment, materials, or commodities if the vessels are transiting high-risk waters.

(2) The Secretary of Transportation shall direct each department or agency responsible to provide armed personnel under paragraph (1) to reimburse, subject to the availability of appropriations, the owners or operators of applicable vessels for the cost of providing armed personnel.

(3) In this subsection, the term "high-risk waters" means waters so designated by the Commandant of the Coast Guard in the Port Security Advisory in effect on the date on which an applicable voyage begins.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1642; Pub. L. 110-417, div. C, title XXXV, §3511(a), (b), Oct. 14, 2008, 122 Stat. 4769; Pub. L. 112-213, title V, §503, Dec. 20, 2012, 126 Stat. 1575.)

17. FLY AMERICA

49 U.S.C. §40118

41 CFR Part 301-10.131 - 301-10.143

Applicability to Contracts: The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements: The Fly America requirements flow down from NCTD to Contractor, who is responsible for ensuring that lower tier subcontractors are in compliance.

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10.131 - 301-10.143, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or

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property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

18. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

49 U.S.C. 5333

40 U.S.C. 3141 – 3144

40 U.S.C. 3146 – 3147

18 U.S.C. 874

40 U.S.C. 3145

Applicability to Contracts: The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 FR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

Flow Down Requirements: Applies to Contractor and its subcontractors at every tier.

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than Monthly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one (1) classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contract Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The Contract Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n) (4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n) (4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contract Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the

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Contract Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and shall advise the Contract Officer or will notify the Contract Officer within the thirty (30) day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contract Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contract Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contract Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and shall advise the Contract Officer or will notify the Contract Officer within the thirty (30) day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The Contract Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The Contract Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contract Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contract Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the Contract Officer or will notify the Contract Officer within the thirty (30) day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contract Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contract Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contract Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and shall advise the Contract Officer or will notify the Contract Officer within the thirty (30) day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

(2) **Withholding** - NCTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Agreement or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full

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amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, NCTD may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any Agreement work is performed a copy of all payrolls to NCTD for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Agreement and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records

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upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration

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may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this Agreement shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10)–**Certification of eligibility** - (i) By entering into this Agreement, the Contractor certifies that neither it (nor he or she) nor any person or Contractor who has an interest in the Contractor's Agreement is a person or contractor ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Agreement shall be subcontracted to any person or Contractor ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) **Contract Work Hours and Safety Standards Act.** The Agency Head shall cause or require the Contract Officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) **Withholding for unpaid wages and liquidated damages.** The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall

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cause or require the Contract Officer to insert a clause requiring that the Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Agreement for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the Contract Officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

OMB Control Number

(a)(1)(ii)(B) 1215-0140

(a)(1)(ii)(C) 1215-0140

(a)(1)(iv) 1215-0140

(a)(3)(i) 1215-0140,

1215-0017

(a)(3)(ii)(A) 1215-0149

(c) 1215-0140,

1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph

(a)(1)(ii) indefinitely.

19. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

29 CFR Part 5

40 U.S.C. 3701 et seq.

40 U.S.C. 3702

Applicability to Contracts: The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b) (1) (B) (iii) and (b) (2), 29 CFR 5.2(h), 49 CFR 18.36(i) (6).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work" with a value greater than \$100,000. These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12)

Flow Down Requirements: Applies to Contractor and its subcontractors at every tier.

(1) **Overtime requirements** - Neither Contractor nor subcontractors contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - NCTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor

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under any such contract or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

20. BONDING

Applicability to Contracts: This section applies only to construction or facility improvement contracts exceeding \$100,000.

See provisions in the Agreement for bonding requirements.

21. SEISMIC SAFETY

42 U.S.C. 7701 et seq. 49 CFR Part 41

Applicability to Contracts: The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down Requirements: The Seismic Safety requirements flow down from NCTD to Contractor to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all-subcontractors.

Seismic Safety - The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. The Contractor will facilitate and follow Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. 7704 note, except as the Federal Government determines otherwise in writing.

22. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215

Applicability to Contracts: The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down Requirements: These provisions are applicable to all contracts and subcontracts at every tier.

(a) **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying Agreement in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Agreement and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to NCTD's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

COMPRESSOR AND DRYER REPLACEMENT

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the Agreement involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying Agreement in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the Agreement involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

23. ENERGY CONSERVATION

42 U.S.C. 6321 et seq. 49 CFR Part 622

Applicability to Contracts: The Energy Conservation requirements are applicable to all contracts.

Flow down Requirements: The Energy Conservation requirements extend to Contractor and its contracts at every tier.

Energy Conservation - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The Contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.

24. RECYCLED PRODUCTS

42 U.S.C. 6962 40 CFR Part 247 Executive Order 12873

Applicability to Contracts: The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures \$10,000 or more of one (1) of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

Flow down Requirements: These requirements flow down to Contractor and all subcontractor tiers.

Recovered Materials - The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR part 247.

25. ADA ACCESS

49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101

COMPRESSOR AND DRYER REPLACEMENT

The Contractor shall comply with 29 USC § 794(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

26. SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. § 402
U.S. DOT Order 3902.10

Applicability to Contracts: Applicable to all contracts.

Flow down Requirements: The Safe Operations of Motor Vehicles extends to Contractor and its contracts at every tier and, sub-recipients and their sub-agreements at every tier.

Seat Belt Use.

The Contractor agrees to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles;

Distracted Driving, Including Text Messaging While Driving.

(i) **Safety.** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award;

(ii) **Contractor Size.** The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

27. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts: When NCTD maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow down Requirements: The Federal Privacy Act requirements flow down to Contractor and its contracts at every tier.

Contracts Involving Federal Privacy Act Requirements: The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

28. METRIC REQUIREMENTS

15 U.S.C. §§205
2007-Pub. L. 110-69

As required by U.S. DOT or FTA, NCTD agrees to use the metric system of measurement in its project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and

COMPRESSOR AND DRYER REPLACEMENT

Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the NCTD agrees to accept products and services with dimensions expressed in the metric system of measurement.

29. VETERANS EMPLOYMENT

49 U.S.C. 5325 (k)

Applicability to Contracts: These requirements apply to all contracts for construction.

Flow down Requirements: This section flows down to Contractor and its contracts at every tier.

Veterans Employment. As provided by 49 U.S.C. § 5325(k):

(a.) To the extent practicable, Contractor agrees that it:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

(b.) Contractor also assures that its subcontractors:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

30. NOTICE OF LEGAL MATTERS

2 C.F.R. §§ 180.220(b)-(c)

Applicability to Contracts: The Notice of Legal Matters requirements apply to all contracts covered under 2 C.F.R. §180.220 and 1200.220 and the amount of the Agreement is expected to equal or exceed \$25,000.

Flow down Requirements: The Notice of Legal Matters requirements flow down to Contractor and its contracts at every tier as permitted under OMB guidance at 2 C.F.R. 180.220(c).

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor agrees to promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Contractor must include a similar notification requirement in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, *et seq.*, or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid

COMPRESSOR AND DRYER REPLACEMENT

rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

31. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

Applicability to Contracts: Applicable to all contracts.

Flow down Requirements: The Federal Tax Liability and Recent Felony Convictions prohibition extends to Contractor and its contracts at every tier and, sub-recipients and their sub-agreements at every tier.

(1) Transactions Prohibited.

(i) The Recipient agrees that, prior to entering into any Third Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third Party Participant a certification that the Third Party Participant—

(A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

(ii) If the prospective Third Party Participant cannot so certify, the Recipient agrees to refer the matter to FTA and not to enter into any Third Party Agreement with the Third Party Participant without FTA’s written approval.

32. PROMOTING FREE SPEECH AND RELIGIOUS LIBERTY

Applicability to Contracts: Applicable to all contracts.

Flow down Requirements: These requirements have unlimited flow down from Contractor to its subcontractors at every tier.

Promoting Free Speech and Religious Liberty. Contractor agrees to ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

END OF SECTION

**COMPRESSOR AND DRYER REPLACEMENT
SECTION 09: DAVIS-BACON PREVAILING WAGE DETERMINATION**

"General Decision Number: CA20230001 10/06/2023

Superseded General Decision Number: CA20220001

State: California

Construction Types: Building, Heavy (Heavy and Dredging),
Highway and Residential

County: San Diego County in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS; RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658.

Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered	. Executive Order 14026
into on or after January 30,	generally applies to the
2022, or the contract is	contract.
renewed or extended (e.g., an	. The contractor must pay
option is exercised) on or	all covered workers at

COMPRESSOR AND DRYER REPLACEMENT

after January 30, 2022:	least \$16.20 per hour (or
	the applicable wage rate
	listed on this wage
	determination, if it is
	higher) for all hours
	spent performing on the
	contract in 2023.
<hr/>	
If the contract was awarded on	. Executive Order 13658
or between January 1, 2015 and	generally applies to the
January 29, 2022, and the	contract.
contract is not renewed or	. The contractor must pay
all	covered workers at least
extended on or after January	\$12.15 per hour (or the
30, 2022:	applicable wage rate
listed	on this wage
determination,	if it is higher) for all
	hours spent performing on
	that contract in 2023.
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The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the

COMPRESSOR AND DRYER REPLACEMENT

Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023
1	01/13/2023
2	06/09/2023
3	07/14/2023
4	08/11/2023
5	08/18/2023
6	09/01/2023
7	09/08/2023
8	10/06/2023

ASBE0005-002 07/04/2022

	Rates	Fringes
Asbestos Workers/Insulator (Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems).....	\$ 49.58	25.27
Fire Stop Technician (Application of Firestopping Materials for wall openings and penetrations in walls, floors, ceilings and curtain walls).....	\$ 32.09	19.66

ASBE0005-004 07/04/2022

Rates	Fringes
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COMPRESSOR AND DRYER REPLACEMENT

Asbestos Removal
worker/hazardous material
handler (Includes
preparation, wetting,
stripping, removal,
scrapping, vacuuming, bagging
and disposing of all
insulation materials from
mechanical systems, whether
they contain asbestos or not)....\$ 23.52 13.37

BOIL0092-003 01/01/2021

	Rates	Fringes
BOILERMAKER.....	\$ 46.03	38.81

BRCA0004-008 11/01/2022

	Rates	Fringes
BRICKLAYER; MARBLE SETTER.....	\$ 44.65	19.00

BRCA0018-004 06/01/2022

	Rates	Fringes
MARBLE FINISHER.....	\$ 37.87	14.13
TILE FINISHER.....	\$ 32.44	12.54
TILE LAYER.....	\$ 45.05	18.33

BRCA0018-010 09/01/2022

	Rates	Fringes
TERRAZZO FINISHER.....	\$ 38.37	14.13
TERRAZZO WORKER/SETTER.....	\$ 46.49	14.66

CARP0213-003 07/01/2021

COMPRESSOR AND DRYER REPLACEMENT

Rates

Fringes

Drywall

(1) Work on wood framed
construction of single
family residences,
apartments or condominiums
under four stories

Drywall Installer/Lather...	\$ 32.14	16.28
Drywall Stocker/Scrapper...	\$ 22.16	8.62

CARP0619-002 07/01/2021

Rates

Fringes

Drywall

(2) All other work

Drywall Installer/Lather...	\$ 42.80	16.28
Drywall Stocker/Scrapper...	\$ 23.07	8.62

CARP0619-003 07/01/2021

Rates

Fringes

CARPENTER

(1) Bridge.....	\$ 51.53	16.28
(2) Commercial Building....	\$ 46.30	16.28
(3) Heavy & Highway.....	\$ 51.40	16.28
(4) Residential Carpenter..	\$ 38.47	16.28
(5) Residential Insulation Installer.....	\$ 24.16	15.76

PILEDRIVERMAN.....	\$ 51.53	16.28
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CARP0619-004 07/01/2021

Rates

Fringes

Diver

(1) Wet.....	\$ 831.20	16.28
(2) Standby.....	\$ 444.24	16.28
(3) Tender.....	\$ 436.24	16.28
(4) Assistant Tender.....	\$ 412.24	16.28

COMPRESSOR AND DRYER REPLACEMENT

Amounts in "'Rates' column are per day

CARP0721-001 07/01/2021

	Rates	Fringes
Modular Furniture Installer.....	\$ 21.85	7.15

CARP1607-004 07/01/2021

	Rates	Fringes
MILLWRIGHT.....	\$ 51.90	16.48

ELEC0569-001 06/05/2023

	Rates	Fringes
Electricians (Tunnel Work)		
Cable Splicer.....	\$ 60.30	17.84
Electrician.....	\$ 59.46	17.81
Electricians: (All Other Work, Including 4 Stories Residential)		
Cable Splicer.....	\$ 53.60	17.64
Electrician.....	\$ 52.85	17.62

ELEC0569-004 06/01/2023

	Rates	Fringes
ELECTRICIAN (Sound & Communications Sound Technician).....	\$ 38.78	14.04
SCOPE OF WORK Assembly, installation, operation, service and maintenance of components or systems as used in closed circuit television, amplified master television distribution, CATV on		

COMPRESSOR AND DRYER REPLACEMENT

private property, intercommunication, burglar alarm, fire alarm, life support and all security alarms, private and public telephone and related telephone interconnect, public

address, paging, audio, language, electronic, background music

system less than line voltage or any system acceptable for

class two wiring for private, commercial, or industrial use

furnished by leased wire, frequency modulation or other recording devices, electrical apparatus by means of which electricity is applied to the amplification, transmission,

transference, recording or reproduction of voice, music, sound, impulses and video. Excluded from this Scope of Work -

transmission, service and maintenance of background music.

All of the above shall include the installation and transmission over fiber optics.

ELEC0569-005 06/01/2023

Rates

Fringes

Sound & Communications

Sound Technician.....\$ 38.78 14.04

SCOPE OF WORK Assembly, installation, operation, service and

maintenance of components or systems as used in closed circuit

television, amplified master television distribution, CATV on

private property, intercommunication, burglar alarm, fire alarm, life support and all security alarms, private and public telephone and related telephone interconnect, public

address, paging, audio, language, electronic, background music

system less than line voltage or any system acceptable for

class two wiring for private, commercial, or industrial use

COMPRESSOR AND DRYER REPLACEMENT

furnished by leased wire, frequency modulation or other recording devices, electrical apparatus by means of which electricity is applied to the amplification, transmission,

transference, recording or reproduction of voice, music, sound, impulses and video. Excluded from this Scope of Work -

transmission, service and maintenance of background music.

All of the above shall include the installation and transmission over fiber optics.

SOUND TECHNICIAN: Terminating, operating and performing final check-out

ELEC0569-006 06/06/2022

Work on street lighting; traffic signals; and underground systems and/or established easements outside of buildings

	Rates	Fringes
Traffic signal, street light and underground work		
Utility Technician #1.....	\$ 38.67	9.11
Utility Technician #2.....	\$ 30.10	8.85

STREET LIGHT & TRAFFIC SIGNAL WORK:

UTILITY TECHNICIAN #1: Installation of street lights and traffic signals, including electrical circuitry, programmable controller, pedestal-mounted electrical meter

enclosures and laying of pre-assembled cable in ducts. The

layout of electrical systems and communication installation

including proper position of trench depths, and radius at duct banks, location for manholes, street lights and traffic signals.

COMPRESSOR AND DRYER REPLACEMENT

UTILITY TECHNICIAN #2: Distribution of material at jobsite, installation of underground ducts for electrical, telephone, cable TV land communication systems. The setting, leveling, grounding and racking of precast manholes, handholes and transformer pads.

ELEC0569-008 06/05/2023

	Rates	Fringes
ELECTRICIAN (Residential, 1-3 Stories).....	\$ 40.50	8.18

ELEC1245-001 06/01/2022

	Rates	Fringes
LINE CONSTRUCTION		
(1) Lineman; Cable splicer..	\$ 64.40	22.58
(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), overhead & underground distribution line equipment).....	\$ 50.00	21.30
(3) Groundman.....	\$ 38.23	20.89
(4) Powderman.....	\$ 51.87	18.79

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day,
Independence Day, Labor Day, Veterans Day, Thanksgiving
Day
and day after Thanksgiving, Christmas Day

ELEV0018-001 01/01/2023

	Rates	Fringes
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COMPRESSOR AND DRYER REPLACEMENT

ELEVATOR MECHANIC.....\$ 63.95 37.335+a+b

FOOTNOTE:

a. PAID VACATION: Employer contributes 8% of regular hourly rate as vacation pay credit for employees with more than 5 years of service, and 6% for 6 months to 5 years of service.

b. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

ENGI0012-003 07/01/2022

Rates

Fringes

OPERATOR: Power Equipment
(All Other Work)

GROUP 1.....	\$ 51.90	30.70
GROUP 2.....	\$ 52.68	30.70
GROUP 3.....	\$ 52.97	30.70
GROUP 4.....	\$ 54.46	30.70
GROUP 5.....	\$ 48.96	25.25
GROUP 6.....	\$ 54.68	30.70
GROUP 8.....	\$ 54.79	30.70
GROUP 9.....	\$ 49.29	25.25
GROUP 10.....	\$ 54.91	30.70
GROUP 11.....	\$ 49.41	25.25
GROUP 12.....	\$ 55.08	30.70
GROUP 13.....	\$ 55.18	30.70
GROUP 14.....	\$ 55.21	30.70
GROUP 15.....	\$ 55.29	30.70
GROUP 16.....	\$ 55.41	30.70
GROUP 17.....	\$ 55.58	30.70
GROUP 18.....	\$ 55.68	30.70
GROUP 19.....	\$ 55.79	30.70
GROUP 20.....	\$ 55.91	30.70
GROUP 21.....	\$ 56.08	30.70
GROUP 22.....	\$ 56.18	30.70
GROUP 23.....	\$ 56.29	30.70

COMPRESSOR AND DRYER REPLACEMENT

GROUP 24.....	\$ 56.41	30.70
GROUP 25.....	\$ 56.58	30.70
OPERATOR: Power Equipment (Cranes, Piledriving & Hoisting)		
GROUP 1.....	\$ 53.25	30.70
GROUP 2.....	\$ 54.03	30.70
GROUP 3.....	\$ 54.32	30.70
GROUP 4.....	\$ 54.46	30.70
GROUP 5.....	\$ 54.68	30.70
GROUP 6.....	\$ 54.79	30.70
GROUP 7.....	\$ 54.91	30.70
GROUP 8.....	\$ 55.08	30.70
GROUP 9.....	\$ 55.25	30.70
GROUP 10.....	\$ 56.25	30.70
GROUP 11.....	\$ 57.25	30.70
GROUP 12.....	\$ 58.25	30.70
GROUP 13.....	\$ 59.25	30.70
OPERATOR: Power Equipment (Tunnel Work)		
GROUP 1.....	\$ 54.53	30.70
GROUP 2.....	\$ 54.82	30.70
GROUP 3.....	\$ 54.96	30.70
GROUP 4.....	\$ 55.18	30.70
GROUP 5.....	\$ 55.29	30.70
GROUP 6.....	\$ 55.41	30.70
GROUP 7.....	\$ 55.71	30.70

PREMIUM PAY:

\$3.75 per hour shall be paid on all Power Equipment Operator work on the following Military Bases: China Lake Naval Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base, Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics Base Yermo, Edwards AFB, 29 Palms Marine Base and Camp Pendleton

Workers required to suit up and work in a hazardous material

environment: \$2.00 per hour additional. Combination mixer

and compressor operator on gunite work shall be classified

as a concrete mobile mixer operator.

COMPRESSOR AND DRYER REPLACEMENT

SEE ZONE DEFINITIONS AFTER CLASSIFICATIONS

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine operator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (Skid steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease

COMPRESSOR AND DRYER REPLACEMENT

truck); Guard rail post driver operator; Highline cableway signalman; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types

- Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full

slab vibrator, Mechanical berm, curb or gutter(concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted);

Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled

tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine,

COMPRESSOR AND DRYER REPLACEMENT

up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (guniting work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu.

COMPRESSOR AND DRYER REPLACEMENT

yds. struck); Rubber-tired earth-moving equipment operator
(multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy;
Skiploader operator (crawler and wheel type over 1-1/2 yds.
up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over,
or
similar-bulldozer, tamper, scraper and push tractor single
engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bending machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high
pressure
waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types
(Calweld 200 B bucket or similar types-Watson 3000 or 5000
auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single
engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower

COMPRESSOR AND DRYER REPLACEMENT

crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator;

Drilling machine operator, bucket or auger types (Calweld,

auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar

with compressor; Mass excavator operator less than 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth-moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self-loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote-control earth-moving equipment operator (operating a second piece of equipment: \$1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any

and all attachments over 25 yds. and up to and including 50

yds. struck); Rubber-tired earth-moving equipment operator,

operating equipment with push-pull system (multiple

COMPRESSOR AND DRYER REPLACEMENT

engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck);

Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types);

Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50

cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem

COMPRESSOR AND DRYER REPLACEMENT

(scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

COMPRESSOR AND DRYER REPLACEMENT

GROUP 1: Engineer oiler; Fork lift operator (includes
loed,
lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier
operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator;
Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-
Western
or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator;
Hoist
operator (Chicago boom and similar type); Lift mobile
operator; Lift slab machine operator (Vagtborg and
similar
types); Material hoist and/or manlift operator; Polar
gantry crane operator; Self Climbing scaffold (or similar
type); Shovel, backhoe, dragline, clamshell operator
(over
3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe,
dragline,
clamshell operator (over 5 cu. yds. mrc); Tower crane
repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton
capacity); Crawler transporter operator; Derrick barge
operator (up to and including 25 ton capacity); Hoist
operator, stiff legs, Guy derrick or similar type (up to
and including 25 ton capacity); Shovel, backhoe,
dragline,
clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and
including
50 tons mrc); Derrick barge operator (over 25 tons up to
and including 50 tons mrc); Highline cableway operator;
Hoist operator, stiff legs, Guy derrick or similar type

COMPRESSOR AND DRYER REPLACEMENT

(over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

COMPRESSOR AND DRYER REPLACEMENT

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum);

Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine

operator; Heading shield operator; Heavy-duty repairperson;

Loader operator (Athey, Euclid, Sierra and similar types);

Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor

drill combination operator; Tugger hoist operator (2 drum);

Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

ENGINEERS ZONES

\$1.00 additional per hour for all of IMPERIAL County and the portions of KERN, RIVERSIDE & SAN BERNARDINO Counties as defined below:

That area within the following Boundary: Begin in San Bernardino County, approximately 3 miles NE of the intersection of I-15 and the California State line at that point which is the NW corner of Section 1, T17N,m R14E, San Bernardino

COMPRESSOR AND DRYER REPLACEMENT

Meridian. Continue W in a straight line to that point which is the SW corner of the northwest quarter of Section 6, T27S, R42E, Mt. Diablo Meridian. Continue North to the intersection with the Inyo County Boundary at that point which is the NE corner of the western half of the northern quarter of Section 6, T25S, R42E, MDM. Continue W along the Inyo and San Bernardino County boundary until the intersection with Kern County, at that point which is the SE corner of Section 34, T24S, R40E, MDM. Continue W along the Inyo and Kern County boundary until the intersection with Tulare County, at that point which is the SW corner of the SE quarter of Section 32, T24S, R37E, MDM. Continue W along the Kern and Tulare County boundary, until that point which is the NW corner of T25S, R32E, MDM. Continue S following R32E lines to the NW corner of T31S, R32E, MDM. Continue W to the NW corner of T31S, R31E, MDM. Continue S to the SW corner of T32S, R31E, MDM. Continue W to SW corner of SE quarter of Section 34, T32S, R30E, MDM. Continue S to SW corner of T11N, R17W, SBM. Continue E along south boundary of T11N, SBM to SW corner of T11N, R7W, SBM. Continue S to SW corner of T9N, R7W, SBM. Continue E along south boundary of T9N, SBM to SW corner of T9N, R1E, SBM. Continue S along west boundary of R1E, SMB to Riverside County line at the SW corner of T1S, R1E, SBM. Continue E along south boundary of T1S, SBM (Riverside County Line) to SW corner of T1S, R10E, SBM. Continue S along west boundary of R10E, SBM to Imperial County line at the SW corner of T8S, R10E, SBM. Continue W along Imperial and Riverside county line to NW corner of T9S, R9E, SBM. Continue S along the boundary between Imperial and San Diego Counties, along the west edge of R9E,

COMPRESSOR AND DRYER REPLACEMENT

SBM to the south boundary of Imperial County/California state line. Follow the California state line west to Arizona state line, then north to Nevada state line, then continuing NW back to start at the point which is the NW corner of Section 1, T17N, R14E, SBM

\$1.00 additional per hour for portions of SAN LUIS OBISPO, KERN, SANTA BARBARA & VENTURA as defined below:

That area within the following Boundary: Begin approximately 5 miles north of the community of Cholame, on the Monterey County and San Luis Obispo County boundary at the NW corner of T25S, R16E, Mt. Diablo Meridian. Continue south along the west side of R16E to the SW corner of T30S, R16E, MDM. Continue E to SW corner of T30S, R17E, MDM. Continue S to SW corner of T31S, R17E, MDM. Continue E to SW corner of T31S, R18E, MDM. Continue S along West side of R18E, MDM as it crosses into San Bernardino Meridian numbering area and becomes R30W. Follow the west side of R30W, SBM to the SW corner of T9N, R30W, SBM. Continue E along the south edge of T9N, SBM to the Santa Barbara County and Ventura County boundary at that point which is the SW corner of Section 34. T9N, R24W, SBM, continue S along the Ventura County line to that point which is the SW corner of the SE quarter of Section 32, T7N, R24W, SBM. Continue E along the south edge of T7N, SBM to the SE corner to T7N, R21W, SBM. Continue N along East side of R21W, SBM to Ventura County and Kern County boundary at the NE corner of T8N, R21W.

COMPRESSOR AND DRYER REPLACEMENT

Continue W along the Ventura County and Kern County boundary to the SE corner of T9N, R21W. Continue North along the East edge of R21W, SBM to the NE corner of T12N, R21W, SBM. Continue West along the north edge of T12N, SBM to the SE corner of T32S, R21E, MDM. [T12N SBM is a think strip between T11N SBM and T32S MDM]. Continue North along the East side of R21E, MDM to the Kings County and Kern County border at the NE corner of T25S, R21E, MDM, continue West along the Kings County and Kern County Boundary until the intersection of San Luis Obispo County. Continue west along the Kings County and San Luis Obispo County boundary until the intersection with Monterey County. Continue West along the Monterey County and San Luis Obispo County boundary to the beginning point at the NW corner of T25S, R16E, MDM.

\$2.00 additional per hour for INYO and MONO Counties and the Northern portion of SAN BERNARDINO County as defined below:

That area within the following Boundary: Begin at the intersection of the northern boundary of Mono County and the California state line at the point which is the center of Section 17, T10N, R22E, Mt. Diablo Meridian. Continue S then SE along the entire western boundary of Mono County, until it reaches Inyo County at the point which is the NE corner of the Western half of the NW quarter of Section 2, T8S, R29E, MDM. Continue SSE along the entire western boundary of Inyo County, until the intersection with Kern County at the point which is the SW corner of the SE 1/4 of Section 32, T24S, R37E, MDM.

COMPRESSOR AND DRYER REPLACEMENT

Continue E along the Inyo and Kern County boundary until the intersection with San Bernardino County at that point which is the SE corner of section 34, T24S, R40E, MDM. Continue E along the Inyo and San Bernardino County boundary until the point which is the NE corner of the Western half of the NW quarter of Section 6, T25S, R42E, MDM. Continue S to that point which is the SW corner of the NW quarter of Section 6, T27S, R42E, MDM. Continue E in a straight line to the California and Nevada state border at the point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Then continue NW along the state line to the starting point, which is the center of Section 18, T10N, R22E, MDM.

REMAINING AREA NOT DEFINED ABOVE RECIEVES BASE RATE

ENGI0012-004 08/01/2023

	Rates	Fringes
OPERATOR: Power Equipment		
(DREDGING)		
(1) Leverman.....	\$ 64.10	34.60
(2) Dredge dozer.....	\$ 58.13	34.60
(3) Deckmate.....	\$ 58.02	34.60
(4) Winch operator (stern winch on dredge).....	\$ 57.47	34.60
(5) Fireman-Oiler, Deckhand, Bargeman, Leveehand.....	\$ 56.93	34.60
(6) Barge Mate.....	\$ 57.54	34.60

IRON0229-001 01/01/2023

COMPRESSOR AND DRYER REPLACEMENT

	Rates	Fringes
IRONWORKER		
Fence Erector.....	\$ 41.28	25.66
Ornamental, Reinforcing and Structural.....	\$ 46.20	34.30

PREMIUM PAY:

\$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval
Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin
Training
Center-Goldstone, San Clemente Island, San Nicholas Island,
Susanville Federal Prison, 29 Palms - Marine Corps, U.S.
Marine
Base - Barstow, U.S. Naval Air Facility - Sealey,
Vandenberg AFB

\$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air
Base,
Naval Post Graduate School - Monterey, Yermo Marine Corps
Logistics Center

\$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two
Rock

LAB00089-001 07/01/2022

	Rates	Fringes
LABORER (BUILDING and all other Residential Construction)		
Group 1.....	\$ 37.68	22.44

COMPRESSOR AND DRYER REPLACEMENT

Group 2.....	\$ 38.37	22.44
Group 3.....	\$ 39.12	22.44
Group 4.....	\$ 39.98	22.44
Group 5.....	\$ 41.60	22.44

LABORER (RESIDENTIAL

CONSTRUCTION - See definition
below)

(1) Laborer.....	\$ 35.58	20.77
(2) Cleanup, Landscape, Fencing (Chain Link & Wood).	\$ 34.29	20.77

RESIDENTIAL DEFINITION: Wood or metal frame construction of single family residences, apartments and condominiums - excluding (a) projects that exceed three stories over a garage level, (b) any utility work such as telephone, gas, water, sewer and other utilities and (c) any fine grading work, utility work or paving work in the future street and public right-of-way; but including all rough grading work at the job site behind the existing right of way

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete Screeding for Rought Strike-off; Concrete, water curing; Demolition laborer; Flagman; Gas, oil and/or water pipeline laborer; General Laborer; General clean-up laborer; Landscape laborer; Jetting laborer; Temporary water and air lines laborer; Material hoseman (walls, slabs, floors and decks); Plugging, filling of Shee-bolt holes; Dry packing of concrete; Railroad maintenance, Repair Trackman and road beds, Streetcar and railroad construction trac laborers; Slip form raisers; Slurry seal crews (mixer operator, applicator operator, squeegee man, Shuttle man, top man), filling of cracks by any method on any surface; Tarman and mortar man; Tool crib or tool house laborer; Window cleaner; Wire Mesh puling-all concrete pouring operations

GROUP 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger

COMPRESSOR AND DRYER REPLACEMENT

mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute man, pouring concrete, the handling of the concrete from ready mix trucks, such as walls, slabs, decks, floors, foundations, footings, curbs, gutters and sidewalks; Concrete curer-impervious membrane and form oiler; Cutting torch operator (demolition); Guinea chaser; Headboard man-asphalt; Laborer, packing rod steel and pans; membrane vapor barrier installer; Power broom sweepers (small); Riiprap, stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Tank sealer and cleaner; Tree climber, faller, chain saw operator, Pittsburgh Chipper and similar type brush shredders; Underground laborers, including caisson bellower

GROUP 3: Buggymobile; Concrete cutting torch; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2 1/2 feet drill steel or longer; Dri Pak-it machine; High sealer (including drilling of same); Hydro seeder and similar type; Impact wrench, multi-plate; Kettlemen, potmen and means applying asphalt, lay-kold, creosote, line caustic and similar type materials (applying means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools, vibrating machines, pavement breakers, air blasting, come-along, and similar mechanical tools not separately classified herein; Pipelayers back up man coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services; Rotary Scarifier or multiple head concrete chipping scarifier; Steel header board man and guideline setter; Tampers, Barko, Wacker and similar type; Trenching machine, handpropelled

COMPRESSOR AND DRYER REPLACEMENT

GROUP 4: Asphalt raker, luterman, ironer, asphalt dumpman and

asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), Grinder or sander; Concrete saw man; cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Laser beam in connection with laborer's work; Oversize concrete vibrator

operator 70 pounds and over; Pipelayer performing all services in the laying, installation and all forms of connection of pipe from the point of receiving pipe in the

ditch until completion of operation, including any and all

forms of tubular material, whether pipe, metallic or non-metallic, conduit, and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid, gas, air or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated;

No

joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzleman), Porta shot-blast, water blasting

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller-all power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of motive power.

LAB00089-002 11/01/2020

	Rates	Fringes
LABORER (MASON TENDER).....	\$ 33.00	19.23

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COMPRESSOR AND DRYER REPLACEMENT

HEAVY AND HIGHWAY CONSTRUCTION

	Rates	Fringes
Laborers:		
Group 1.....	\$ 38.80	22.44
Group 2.....	\$ 39.27	22.44
Group 3.....	\$ 39.72	22.44
Group 4.....	\$ 40.62	22.44
Group 5.....	\$ 43.58	22.44

LABORER CLASSIFICATIONS

GROUP 1: Laborer: General or Construction Laborer,
Landscape

Laborer. Asphalt Rubber Material Loader. Boring Machine
Tender (outside), Carpenter Laborer (cleaning, handling,
oiling & blowing of panel forms and lumber), Concrete
Laborer, Concrete Screeding for rough strike-off,

Concrete

water curing. Concrete Curb & Gutter laborer, Certified
Confined Space Laborer, Demolition laborer & Cleaning of
Brick and lumber, Expansion Joint Caulking; Environmental
Remediation, Monitoring Well, Toxic waste and

Geotechnical

Drill tender, Fine Grader, Fire Watcher, Limbers, Brush
Loader, Pilers and Debris Handlers. flagman. Gas Oil and
Water Pipeline Laborer. Material Hoseman (slabs, walls,
floors, decks); Plugging, filling of shee bolt holes; Dry
packing of concrete and patching; Post Holer Digger
(manual); Railroad maintenance, repair trackman, road

beds;

Rigging & signaling; Scaler, Slip-Form Raisers, Filling
cracks on any surface, tool Crib or Tool House Laborer,
Traffic control (signs, barriers, barricades, delineator,
cones etc.), Window Cleaner

GROUP 2: Asphalt abatement; Buggymobile; Cement dumper
(on 1

yd. or larger mixers and handling bulk cement); Concrete
curer, impervious membrane and form oiler; Chute man,
pouring concrete; Concrete cutting torch; Concrete pile
cutter; driller/Jackhammer, with drill steel 2 1/'2 feet

or

COMPRESSOR AND DRYER REPLACEMENT

longer; Dry pak-it machine; Fence erector; Pipeline wrapper, gas, oil, water, pot tender & form man; Grout man;

Installation of all asphalt overlay fabric and materials used for reinforcing asphalt; Irrigation laborer; Kettleman-Potman hot mop, includes applying asphalt, lay-kold, creosote, lime caustic and similar tyhpes of materials (dipping, brushing, handling) and waterproofing;

Membrane vapor barrier installer; Pipelayer backup man (coating, grouting, making of joints, sealing caulkiing, diapering including rubber basket joints, pointing); Rotary scarifier, multiple head concrete chipper; Rock slinger; Roto scraper & tiller; Sandblaster pot tender; Septic tank digger/installer; Tamper/wacker operator;

Tank

scaler & cleaner; Tar man & mortar man; Tree climber/faller, chainb saw operator, Pittsburgh chipper & similar type brush shredders.

GROUP 3: Asphalt, installation of all frabrics; Buggy Mobile

Man, Bushing hammer; Compactor (all types), Concrete Curer

- Impervious membrane, Form Oiler, Concrete Cutting Torch,

Concrete Pile Cutter, Driller/Jackhammer with drill steel

2

1/2 ft or longer, Dry Pak-it machine, Fence erector including manual post hole digging, Gas oil or water Pipeline Wrapper - 6 ft pipe and over, Guradrail erector, Hydro seeder, Impact Wrench man (multi plate), kettleman-Potman Hot Mop includes applying Asphalt, Lay-Kold, Creosote, lime caustic and similar types of materials (dipping, brushing or handling) and waterproofing. Laser Beam in connection with Laborer work.

High Scaler, Operators of Pneumatic Gas or Electric Tools,

Vibrating Machines, Pavement Breakers, Air Blasting, Come-Alongs and similar mechanical tools, Remote-Controlled

Robotic Tools in connection with Laborers work. Pipelayer

COMPRESSOR AND DRYER REPLACEMENT

Backup Man (Coating, grouting, making of joints, sealing, caulking, diapering including rubber gasket joints, pointing and other services). Power Post Hole Digger, Rotary Scarifier (multiple head concrete chipper scarifier), Rock Slinger, Shot Blast equipment (8 to 48 inches), Steel Headerboard Man and Guideline Setter, Tamper/Wacker operator and similar types, Trenching Machine hand propelled.

GROUP 4: Any worker exposed to raw sewage. Asphalt Raker, Luteman, Asphalt Dumpman, Asphalt Spreader Boxes, Concrete Core Cutter, Concrete Saw Man, Cribber, Shorer, Head Rock Slinger. Installation of subsurface instrumentation, monitoring wells or points, remediation system installer; Laborer, asphalt-rubber distributor bootman; Oversize concrete vibrator operators, 70 pounds or over. Pipelayer, Prefabricated Manhole Installer, Sandblast Nozzleman (Water Blasting-Porta Shot Blast), Traffic Lane Closure.

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Horizontal directional driller, Boring system, Electronic tracking, Driller: all power drills excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and all other types of mechanical drills without regard to form of motive power. Environmental remediation, Monitoring well, Toxic waste and Geotechnical driller, Toxic waste removal. Welding in connection with Laborer's work.

LAB00300-005 08/01/2022

	Rates	Fringes
Asbestos Removal Laborer.....	\$ 39.23	23.28

COMPRESSOR AND DRYER REPLACEMENT

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste, encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LABO0345-001 07/01/2022

	Rates	Fringes
LABORER (GUNITE)		
GROUP 1.....	\$ 48.50	21.37
GROUP 2.....	\$ 47.55	21.37
GROUP 3.....	\$ 44.01	21.37

FOOTNOTE: GUNITE PREMIUM PAY: Workers working from a Bosn'n's Chair or suspended from a rope or cable shall receive 40 cents per hour above the foregoing applicable classification rates. Workers doing gunite and/or shotcrete work in a tunnel shall receive 35 cents per hour above the foregoing applicable classification rates, paid on a portal-to-portal basis. Any work performed on, in or above any smoke stack, silo, storage elevator or similar type of structure, when such structure is in excess of 75'-0"" above base level and which work must be performed in whole or in part more than 75'-0"" above base level, that work performed above the 75'-0"" level shall be compensated for at 35 cents per hour above the applicable classification wage rate.

GUNITE LABORER CLASSIFICATIONS

GROUP 1: Rodmen, Nozzlemen

GROUP 2: Gunmen

COMPRESSOR AND DRYER REPLACEMENT

GROUP 3: Reboundmen

LABO1184-001 07/01/2022

	Rates	Fringes
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)		
(1) Drilling Crew Laborer...	\$ 40.69	18.25
(2) Vehicle Operator/Hauler.	\$ 40.86	18.25
(3) Horizontal Directional Drill Operator.....	\$ 42.71	18.25
(4) Electronic Tracking Locator.....	\$ 44.71	18.25
Laborers: (STRIPING/SLURRY SEAL)		
GROUP 1.....	\$ 41.90	21.32
GROUP 2.....	\$ 43.20	21.32
GROUP 3.....	\$ 45.21	21.32
GROUP 4.....	\$ 46.95	21.32

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment;
equipment
repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and
application of pavement markers, delineating signs, rumble

COMPRESSOR AND DRYER REPLACEMENT

and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system

installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

LAB01414-003 08/03/2022

	Rates	Fringes
LABORER		
PLASTER CLEAN-UP LABORER....	\$ 38.92	23.32
PLASTER TENDER.....	\$ 41.47	23.32

Work on a swing stage scaffold: \$1.00 per hour additional.

Work at Military Bases - \$3.00 additional per hour:

Coronado Naval Amphibious Base, Fort Irwin, Marine Corps Air

Station-29 Palms, Imperial Beach Naval Air Station, Marine

Corps Logistics Supply Base, Marine Corps Pickle Meadows, Mountain Warfare Training Center, Naval Air

Facility-Seeley, North Island Naval Air Station, Vandenberg

AFB.

PAIN0036-001 07/01/2023

COMPRESSOR AND DRYER REPLACEMENT

	Rates	Fringes
Painters: (Including Lead Abatement)		
(1) Repaint (excludes San Diego County).....	\$ 29.59	17.12
(2) All Other Work.....	\$ 38.52	18.64

REPAINT of any previously painted structure. Exceptions: work involving the aerospace industry, breweries, commercial recreational facilities, hotels which operate commercial establishments as part of hotel service, and sports facilities.

PAIN0036-010 09/01/2022

	Rates	Fringes
DRYWALL FINISHER/TAPER		
(1) Building & Heavy Construction.....	\$ 39.54	21.50
(2) Residential Construction (Wood frame apartments, single family homes and multi-duplexes up to and including four stories).....	\$ 32.27	14.70

PAIN0036-012 10/01/2022

	Rates	Fringes
GLAZIER.....	\$ 47.90	20.71

PAIN0036-019 06/01/2022

	Rates	Fringes
SOFT FLOOR LAYER.....	\$ 34.77	17.89

COMPRESSOR AND DRYER REPLACEMENT

PLAS0200-005 08/03/2022

	Rates	Fringes
PLASTERER.....	\$ 47.37	19.64

NORTH ISLAND NAVAL AIR STATION, COLORADO NAVAL AMPHIBIOUS
BASE, IMPERIAL BEACH NAVAL AIR STATION: \$3.00 additional
per hour.

PLAS0500-001 07/01/2018

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER		
GROUP 1.....	\$ 26.34	19.77
GROUP 2.....	\$ 27.99	19.77
GROUP 3.....	\$ 30.07	21.12

CEMENT MASONS - work inside the building line, meeting
the
following criteria:

GROUP 1: Residential wood frame project of any size;
work
classified as Type III, IV or Type V construction;
interior tenant improvement work regardless the size of
the
project; any wood frame project of four stories or less.

GROUP 2: Work classified as type I and II construction

GROUP 3: All other work

* PLUM0016-006 09/01/2023

	Rates	Fringes
PLUMBER, PIPEFITTER,		

COMPRESSOR AND DRYER REPLACEMENT

STEAMFITTER

Camp Pendleton; Vandenberg Air Force Base.....\$ 61.68	26.51
Work ONLY on new additions and remodeling of commercial buildings, bars, restaurants, and stores not to exceed 5,000 sq. ft. of floor space.....\$ 53.51	25.28
Work ONLY on strip malls, light commercial, tenant improvement and remodel work.....\$ 42.49	23.86
All other work except work on new additions and remodeling of bars, restaurant, stores and commercial buildings not to exceed 5,000 sq. ft. of floor space and work on strip malls, light commercial, tenant improvement and remodel work.....\$ 55.18	26.26

PLUM0016-011 09/01/2023

Rates Fringes

PLUMBER/PIPEFITTER

Residential.....\$ 45.22	22.43
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PLUM0345-001 09/01/2023

Rates Fringes

PLUMBER

Landscape/Irrigation Fitter.\$ 40.20	25.90
Sewer & Storm Drain Work....\$ 44.29	23.28

ROOF0045-001 07/01/2023

COMPRESSOR AND DRYER REPLACEMENT

	Rates	Fringes
ROOFER.....	\$ 41.30	12.04

SFCA0669-001 01/01/2023		

	Rates	Fringes
SPRINKLER FITTER.....	\$ 44.99	25.72

SHEE0206-001 07/01/2020		

	Rates	Fringes
SHEET METAL WORKER		
Camp Pendleton.....	\$ 42.62	29.55
Except Camp Pendleton.....	\$ 40.62	29.55
Sheet Metal Technician.....	\$ 30.51	9.49

SHEET METAL TECHNICIAN - SCOPE:

a. Existing residential buildings, both single and multi-family, where each unit is heated and/or cooled by a separate system b. New single family residential buildings including tracts. c. New multi-family residential buildings, not exceeding five stories of living space in height, provided each unit is heated or cooled by a separate system. Hotels and motels are excluded. d. LIGHT COMMERCIAL WORK: Any sheet metal, heating and air conditioning work performed on a project where the total construction cost, excluding land, is under \$1,000,000 e. TENANT IMPROVEMENT WORK: Any work necessary to finish interior spaces to conform to the occupants of commercial buildings, after completion of the building shell

TEAM0166-001 07/01/2023

COMPRESSOR AND DRYER REPLACEMENT

	Rates	Fringes
Truck drivers:		
GROUP 1.....	\$ 30.12	25.57
GROUP 2.....	\$ 40.71	25.57
GROUP 3.....	\$ 40.91	25.57
GROUP 4.....	\$ 41.11	25.57
GROUP 5.....	\$ 41.31	25.57
GROUP 6.....	\$ 41.80	25.57
GROUP 7.....	\$ 43.31	25.57

FOOTNOTE: HAZMAT PAY: Work on a hazmat job, where hazmat certification is required, shall be paid, in addition to the classification working in, as follows: Levels A, B and

C - +\$1.00 per hour. Workers shall be paid hazmat pay in increments of four (4) and eight (8) hours.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Fuel Man, Swamper

GROUP 2: 2-axle Dump Truck, 2-axle Flat Bed, Concrete Pumping Truck, Industrial Lift Truck, Motorized Traffic Control, Pickup Truck on Jobsite

GROUP 3: 2-axle Water Truck, 3-axle Dump Truck, 3-axle Flat Bed, Erosion Control Nozzleman, Dump Crete Truck under 6.5 yd, Forklift 15,000 lbs and over, Prell Truck, Pipeline Work Truck Driver, Road Oil Spreader, Cement Distributor or Slurry Driver, Bootman, Ross Carrier

GROUP 4: Off-road Dump Truck under 35 tons 4-axles but less than 7-axles, Low-Bed Truck & Trailer, Transit Mix Trucks under 8 yd, 3-axle Water Truck, Erosion Control Driver, Grout Mixer Truck, Dump Crete 6.5yd and over, Dumpster Trucks, DW 10, DW 20 and over, Fuel Truck and Dynamite, Truck Greaser, Truck Mounted Mobile Sweeper 2-axle Winch

COMPRESSOR AND DRYER REPLACEMENT

Truck

GROUP 5: Off-road Dump Truck 35 tons and over, 7-axles or more, Transit Mix Trucks 8 yd and over, A-Frame Truck, Swedish Cranes

GROUP 6: Off-Road Special Equipment (including but not limited to Water Pull Tankers, Athey Wagons, DJB, B70 Wuclids or like Equipment)

GROUP 7: Repairman

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic

COMPRESSOR AND DRYER REPLACEMENT

violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example:

COMPRESSOR AND DRYER REPLACEMENT

PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

COMPRESSOR AND DRYER REPLACEMENT

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter

COMPRESSOR AND DRYER REPLACEMENT

* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator

(See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

COMPRESSOR AND DRYER REPLACEMENT
Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"

ATTACHMENT 1: SAMPLE AGREEMENT

AGREEMENT

BETWEEN

NORTH COUNTY TRANSIT DISTRICT

AND

CONTRACTOR NAME

AGREEMENT NUMBER:

This Agreement (“Agreement”) is made and entered into by and among the **North County Transit District (“NCTD”)** operating pursuant to Public Utilities Code sections § 125000, et. seq. and _____ **(“Contractor”). Both NCTD and Contractor are collectively referred to as “Parties”.**

NCTD and Contractor, for the consideration hereinafter described, agree as follows:

ARTICLE 1 - SCOPE OF WORK/ORDER OF PRECEDENCE

The Scope of Work, Base Bid Price, terms, conditions, procedures, requirements and any applicable technical specifications for this Agreement are those described in the IFB for Compressor & Dryer Replacement – No. 33314, including Addenda X through X, all of which are hereby incorporated in this Agreement in their entirety by reference and attached herein as an Exhibit (collectively referred to as “the Agreement Documents” or the “Agreement”). If there is a conflict between Agreement Documents, the document highest in preference shall control. The order of precedence shall be:

1. This Agreement
2. Conformed IFB – No. 33314 (Exhibit 1)
3. Bid Submission (Exhibit 2)

ARTICLE 2 – PERIOD OF PERFORMANCE

Contractor shall provide NCTD with the services described in the Scope of Work attached as provided in IFB – No. 33314 (the “Work”). Contractor agrees to provide services to NCTD in accordance with the terms and conditions of this Agreement, and to exercise the degree of professional care, skill, efficiency, and judgment ordinarily employed by contractors with expertise in the service required under this Agreement. Contractor represents that it has in effect all licenses, registrations, and certifications in good standing that are required under applicable law and regulations to perform these services, and agrees to retain such licenses, registrations, and certifications in active status throughout the duration of this Agreement.

Following the receipt, by NCTD, of all required bonds and insurance certificates, a Schedule of Values (if this Agreement is for a construction project), and execution by both Parties of this Agreement, NCTD shall issue a Notice to Proceed (NTP) for the Work. The commencement of Work by Contractor before receipt of the NTP is at the sole risk and expense of the Contractor who shall be fully liable for any damage or injury sustained by the NCTD or third persons resulting therefrom.

As time is of the essence for this Agreement, all of the Work included in the Agreement Documents shall be completed no later than One-Hundred Seventy-Five (175) calendar days after the issuance of the Notice to Proceed. The Contractor shall prosecute the work continuously and diligently and make every attempt to complete the work no later than the dates specified in the NTP. If applicable, Liquidated

Damages shall be obtained as specified in Compressor & Dryer Replacement – No. XXXXX-OS document in the section entitled “Liquidated Damage” of the IFB.

ARTICLE 3 – AGREEMENT AMOUNT AND PAYMENTS

A. AGREEMENT AMOUNT

As full compensation for providing all of the labor, material, equipment and for furnishing all of the services and documentation in accordance with the Agreement, and for the fulfillment of the Agreement requirements and completion of all of the Work, NCTD shall pay a firm fixed price total Agreement amount of [XXXXXXX]. Payments shall be in accordance with the Schedule of Values agreed to by NCTD and as specified in this Agreement.

B. AVAILABILITY OF FUNDING

NCTD’s obligation for payment of any contract beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. NCTD shall, at its sole discretion, have the right to terminate or suspend the contract or reduce compensation and service levels or scope of work proportionately upon thirty (30) days’ written notice to the Contractor in the event that federal, state or other funding for the resulting contract ceases or is reduced prior to the ordinary completion date of the term of the resulting contract. In the event of reduction of funding for the contract, NCTD and Contractor shall meet within ten (10) days of written notice to renegotiate the contract based upon the modified level of funding. In this case, if no agreement is reached between NCTD and Contractor within ten (10) days of the first meeting, either party shall have the right to terminate the contract within ten (10) days written notice of termination. In the event of termination of the contract in accordance with the terms of this section, Contractor shall be entitled to any payment offset to which NCTD may be entitled, for damages or otherwise, under the terms of the contract. In the event of termination of the Agreement, in no event shall Contractor be entitled to any loss of profits on the portion of the contract so terminated, or to other compensation, benefits, reimbursements or ancillary services other than as expressly provided herein.

C. PROGRESS PAYMENTS/ PAYMENT SCHEDULE INVOICING/RETENTION

Immediately upon this Agreement being fully executed, Contractor shall prepare and submit to the NCTD Project Manager a Schedule of Values allocated to the various portions of the Work. This Schedule of Values, when approved by NCTD shall be used as the basis for the Contractor’s application for payment. Each percentage (%) completion figure on the progress payment applications shall be confirmed by signatures of the NCTD Project Manager designated for the Agreement. Payment applications shall not be submitted more often than monthly. Contractor shall not be paid if certified payrolls for each week of work being invoiced have not been submitted in accordance with the Agreement for the payment period together with its payment request. After the receipt of such a request NCTD shall confirm the percentage completion values. The Schedule of Values must be prepared in accordance with this Section. **Advance payments are prohibited.**

Each month within thirty (30) calendar days after receipt of an undisputed and properly submitted application for payment to the NCTD Project Manager, there shall be paid to Contractor a sum equal to ninety-five percent (95%) of the value of work performed up to the last day of the previous month, less the aggregate of previous payments. Each Schedule of Value line item shall be inclusive of the Contractor’s overhead and profit and any applicable taxes or any other charges. The sum of all values listed in the Schedule shall equal the total Agreement amount. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or any bondsman from damages arising from such work or from enforcing each and every provision of this Agreement and NCTD shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning Work or any

portion thereof given by NCTD or any NCTD Project Representative shall remain in a state of non-compliance.

If the performance duration of the Work continues beyond the schedule as a result of delays by the Contractor, then this delay shall be assessed Liquidated Damages as described herein. All delays caused by no fault of the Contractor must be documented and submitted to NCTD as soon as these delays are anticipated.

Whenever any part of the Work is in a condition suitable for use, and the best interest of NCTD requires such use, NCTD may take possession of, connect to, open for public use, or use a part thereof. When so used, maintenance and repairs due to ordinary wear and tear or vandalism will be made at NCTD's expense. The use by NCTD as contemplated in this section shall in no case be construed as constituting acceptance of the Work or any part thereof. Such use shall neither relieve the Contractor of any of his responsibilities under the Agreement nor act as a waiver by NCTD of any of the conditions thereof. Contractor shall continue to maintain all insurance required hereunder on the project.

D. INVOICE SUBMITTAL

1. NCTD shall make payment to the Contractor within thirty (30) days from the date of the invoice and after confirmation of Work performed.
2. Invoicing shall not be submitted more often than monthly.
3. Invoices may be mailed or delivered to 810 Mission Avenue, Oceanside, CA 92054, Attn: Accounts Payable or emailed to apclerks@nctd.org. Only one method of delivery may be used for the life of the Agreement.
4. Contractor is to submit invoices in a form that clearly identifies the date that the work was completed, a brief description of the work performed, and the amount due.
5. Contractor is to submit back-up documentation to support authorized expenses. These items, if applicable, must be attached to each invoice. If certified payrolls are not received, as required, to the attention of NCTD's labor compliance consultant, Gafcon, invoices may be held for payment until submittals are received.
6. No payment will be made for work performed by any classification not listed in the original Agreement or added to the Agreement by NCTD or for work performed after the performance period.
7. The format of the invoice to be submitted is provided as an Exhibit to this Agreement and is subject to change based on the discretion of NCTD.
8. All invoices must reference the Agreement number and NCTD's internal Purchase Order numbers, if any, issued at time of NTP.
9. No payment will be made for any work performed outside of the performance period of the Agreement.
10. If the Contractor fails to submit a deliverable required by the Agreement, payment shall not be made until the deliverable is received.
11. If the Contractor fails to satisfactorily complete each of the milestones of the Agreement, no further progress payment will be made until the milestone has been satisfactorily achieved.
12. NCTD requires timely invoicing in order to accurately track the rate funds are being used on a project and to ensure expenses incurred in a particular fiscal year come from amounts budgeted for that fiscal year. Accordingly, Contractor expressly waives any right to seek otherwise allowable reimbursements or payments from NCTD pursuant to this Agreement for expenses incurred by Contractor or its subcontractors, which are not submitted to NCTD for payment either: 1) within 180 (one hundred and eighty) days after they are incurred, or 2) within 60 (sixty) days of NCTD's fiscal year end, which is June 30 of each year, whichever comes first. It is Contractor's responsibility to ensure its subcontractors and suppliers invoice Contractor within sufficient time for Contractor to meet these deadlines.

E. SCHEDULE OF VALUES/INVOICING REQUIREMENTS

After receipt of the Notice to Proceed (NTP), and prior to the performance of any Work, the Contractor is to submit a Schedule of Values that segregates the work of the prime Contractor from that of all subcontractors and that clearly defines the value of the work for each subcontractor. The Schedule of Values must list out the value and cost of every billable work item on a step-by-step project timeline, that is capable of being used to show completion of milestones for the work that's been completed to date. After the Schedule of Values is approved by NCTD it will be used to verify the work performed and to release payment. Due to internal accounting and tracking requirements of NCTD, each invoice must reference the amount being billed for the Contractor and each subcontractor's portion on each invoice.

F. TITLE

Title to any goods or work product shall pass to NCTD at the time of NCTD's payment. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances. The transfer of title as specified above shall not imply acceptance by NCTD, nor relieve the Contractor from the responsibility for strict compliance with the Agreement and for any loss of or damage to the Work.

The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the NCTD proper bills of sale or other written instruments of title in a form as required by NCTD; said instruments shall convey to the NCTD title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they have delivered, unloaded, and received by NCTD FOB at the destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to NCTD.

G. PAYMENT WITHHELD

In addition to amounts which NCTD may retain under the paragraph entitled "Retention," NCTD may withhold a sufficient amount or amounts of any payment of payments otherwise due to Contractor, as in its judgment may be necessary to cover:

1. Payments that may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the project under this Agreement.
2. Costs of investigation and/or repair of any defects and/or damages to any portion of the Work required under this Agreement and not remedied by Contractor.
3. Failure of Contractor to make proper payment to its subcontractor or for material or labor.
4. Completion of Work if there exists a reasonable doubt that Work can be completed for balance then unpaid under the Agreement.
5. Damage to another contractor.
6. Re-testing of non-passing tests.
7. Retention will not be paid until all operations and maintenance manuals, as-built drawings, or other required deliverables are received and approved. When the above grounds are removed, payment shall be made for amounts withheld because of them.

NCTD may apply such withheld amount or amounts to payment of such claims of obligations at its discretion. In so doing, NCTD shall be deemed the agent of Contractor and any payment so made by NCTD shall be considered as a payment made under contract by NCTD to Contractor and NCTD shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. NCTD will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

H. CHARGES TO CONTRACTOR

Everything charged to the Contractor under the terms of this Agreement shall be paid by the Contractor to NCTD on demand. Such charges may be deducted by NCTD from any money due or to become due to the Contractor under the contract. NCTD may recover such charges from the Contractor or from its surety.

I. RETENTION

NCTD shall retain from each progress payment five percent (5%) of the progress payment as part security for the fulfillment of this Agreement by the Contractor. The 5% will be held from the total Agreement value, as amended, or as may be adjusted by Change Orders.

J. PROMPT PAYMENT (49 CFR 26.29)

Contractor shall make prompt payment of all monies due and owed to DBE and non-DBE firms within seven (7) business days upon receipt of payment from NCTD as per Agreement. Payment of retention shall be made to all DBE and non-DBE subcontractors within ten (10) days after satisfactory completion of the subcontracted work. The prime contractor shall utilize the PlanetBids "My Contracts" portal to report monthly subcontractor payment reports during the reporting month. Contractor shall ensure that its subcontractors are added into the PlanetBids "MyContracts" portal once the Agreement has been awarded. Prime contractors shall submit a monthly subcontractor payment report on the PlanetBids "MyContracts" portal by the 20th of each month following the end of the reporting month and should reflect all payments made to subcontractor(s) through the last day of the previous month, even if the subcontractor(s) did not perform any work. Contractor shall ensure that its subcontractor(s) use the PlanetBids "MyContracts" portal to verify the payment amounts the prime contractor submitted by the 25th of each month following the end of the reporting month. In order for Contractor to submit a sufficient monthly subcontractor payment report, the Contractor must verify that its subcontractors' DBE certification is current at the time of payment. Certified Contractors can be found at the following State of California website: <https://californiaucp.dbesystem.com/>

The Contractor or subcontractor shall pay to any subcontractor for the satisfactory performance of its contract or portion thereof, not later than 10 days after receipt of each progress payment, in accordance with 49 CFR 26.29 and Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing by NCTD. Any delay or postponement of payment over 10 days may take place only for good cause and with NCTD's prior written approval. Any violation of 49 CFR 26.29 or Section 7108.5 shall subject the violating Contractor or subcontractor at any tier to the penalties, sanctions, and other remedies of those laws. 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.

In addition, for projects that invoice only at the completion of the project, within seven (7) days of the Contractor's receipt of released retention from NCTD upon completion of the project as defined in California Public Contract Code section 7107, the Contractor shall pay each of its subcontractors from whom retention has been withheld each subcontractor's share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by NCTD, the Contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. Any delay or postponement of payment may take place only for good cause and with NCTD's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and California Public Contract Code section 7107. 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. This clause applies to both DBE and non-DBE subcontractors.

The Construction Manager/Project Manager shall notify the Project Manager and Contract Officer immediately if the Contractor fails to meet any fabrication, inspection, or test standard or plan, or at any time the Construction Manager/Project Manager determines that the work performed is substandard. The Project Manager is responsible to determine the course of action to be taken by NCTD upon notification from the Construction Manager/Project Manager.

Disputes between the Contractor and any lower tier DBE subcontractors, which cannot be settled by discussions between the parties involved, shall be settled as described herein. Contractor shall notify NCTD in writing of such dispute within ten (10) days of failure to resolve. If affected subcontractor is not comfortable contacting a contractor directly regarding payment or is unable to resolve payment discrepancies with that contractor, subcontractor should contact NCTD's Disadvantaged Business Enterprises Liaison Officer (DBELO) to initiate a complaint. NCTD's DBELO will coordinate meeting requests to assist in the resolution of disputes between the contractor and subcontractor. The assigned NCTD representative will conduct the resolution meetings with parties in dispute. All parties must agree to the procedure. If filing a prompt payment complaint with NCTD's DBELO does not result in timely and meaningful action by NCTD to resolve prompt payment disputes, affected subcontractor may contact the responsible Federal Transit Administration contact if federal funding is being used. The Contractor and subcontractors shall include this dispute resolution provision in their subcontracts.

K. RELEASE UPON PAYMENT/FINAL PAYMENT

Release and Final Payment: NCTD shall, after the satisfactory completion of the Work, make a final estimate of the amount of Work done thereunder and the value of said Work, and NCTD shall pay the entire sum so found to be due after deduction therefrom all previous payments and all amounts to be retained under the provisions of the Agreement Documents, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code Section 3262. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

The final payment of five percent (5%) of the value of Work done under this Agreement, if unencumbered, shall be made within sixty (60) calendar days after the date of completion of the Work, provided however, that in the event of a dispute between NCTD and the Contractor, NCTD may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount. Completion means any of the following as provided by Public Contract Code section 7107:

1. The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.
2. The acceptance by the public agency, or its agent, of the work of improvement.
3. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of one hundred (100) calendar days or more, due to factors beyond the control of the Contractor.
4. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of thirty (30) calendar days or more, if the public agency files for record a notice of cessation or a notice of completion.

This contract is subject to the provisions of Public Contract Code section 7107.

For purposes of this Agreement, the acceptance by NCTD means acceptance made only by an action of the NCTD Board of Directors in session, unless such approval has been delegated by the NCTD Board of Directors to the Executive Director. Acceptance by Contractor of said final payment shall constitute a waiver of all claims against NCTD arising from this Agreement. At any time after fifty percent (50%) of the Work has been completed, if NCTD, by action of the NCTD Board of Directors, finds that satisfactory progress is being made, NCTD may make any of the remaining payments in full for actual work completed or may withhold any amount up to five percent (5%) thereof as NCTD may find appropriate based on the Contractor's progress.

L.SUBSTITUTION OF SECURITIES

Pursuant to the provisions of California Public Contract Code Section 22300, at the request and expense of the Contractor, when the Agreement amount exceeds \$5,000,000, NCTD will pay the amounts retained as security for the completion of the project pursuant to the Agreement Documents, into an escrow account.

The Contractor has the option of selecting the method of retention payment, either by wire transfer or mailing of a check to the Contractor banking institution. If the wire transfer method is selected by the Contractor, the cost for such service will be deducted from the amount of retention transferred to the Contractor banking institution as allowed by California Public Contract Code Section 22300.

ARTICLE 4 – INSURANCE (Modify as Needed with Advice from Risk Manager)

Contractor shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection, with the performance of the work hereunder by Contractor, its agents, representatives, or employees. Proof of insurance shall be submitted to NCTD within five (5) working days of NCTD's request and is required before the commencement of Work.

a. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VI. Carriers must be licensed to do business in California and maintain an agent for service of process within California. Exceptions may be made for insurers when not specifically rated such as the State Compensation Insurance Fund, conglomerates such as Lloyds of London, or for self-insured entities.

b. Pass-Through Costs to NCTD

To the extent Contractor elects to pass through insurance premium costs to NCTD, Contractor shall not charge NCTD for any insurance costs that are not directly attributable to the Work. Contractor shall not pass through insurance costs to NCTD that are attributable to, or overlap with, work performed for Contractor's other project or clients or are included in Contractor's overhead rate.

c. Notice of Termination, Cancellation, or Change

Should any of the insurance policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions and sent to NCTD. Contractor shall notify NCTD immediately following Contractor's first notice or awareness of any proposed or actual termination, cancellation, or change in its insurance coverage. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be amended or canceled, except after 30 days' prior written notice has been given to NCTD. Notice of cancellation sent by email to insurance@nctd.org shall be sufficient notice.

d. Failure to Provide Insurance

Failure to provide and continue in force any insurance as described in this Insurance Section shall be deemed a material breach of this Agreement, which NCTD may deem to constitute cause for immediate termination. NCTD reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined herein. If Contractor fails to maintain the insurance as set forth herein, NCTD shall have the right, but not the obligation, to

purchase said insurance at Contractor's expense and to withhold the expense of such insurance from any payments otherwise due to Contractor.

e. Certificates of Insurance and Endorsements

Contractor shall furnish NCTD with Certificates of Insurance and any required endorsements affecting coverage required by this section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Endorsements must specifically state that they modify the policy language. All certificates and endorsements are to be received and approved by NCTD before work commences. Contractor shall ensure that the representations made on the Certificate of Insurance and Endorsements are true and correct. Complete policies of insurance shall be provided to NCTD upon request and no later than five (5) days after such request. Failure to provide NCTD a copy of the insurance policies required in this Agreement shall be deemed a material breach of contract, which shall be deemed at the option of NCTD to constitute a cause for immediate termination hereof. The coverage forms and related endorsements required herein required by Contractor shall conform to the Insurance Services Office (ISO) 2013 Edition (or the latest revision available).

f. Commercial General Liability and Auto Liability Endorsements

The Commercial General and Auto Liability policies shall contain, or be endorsed to contain, the following provisions:

NCTD, its directors, officers, agents and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. The commercial general liability policy does not need to cover products and completed operations when services Contractor will perform on the Work are not connected to construction or maintenance.

Commercial general liability coverage shall be provided in the form of an additional insured policy endorsement to the Contractor's insurance at least as broad as ISO CG 20 10 and CG 20 37 forms, respectively.

For any claims related to this Work, the Contractor's insurance coverage shall be primary insurance as respects NCTD, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Contractor shall provide NCTD a conforming ISO CG 20 01 Endorsement for Commercial General Liability.

Contractor agrees to waive all rights against NCTD and its directors, officers, agents and employees for recovery of damages to the extent these damages are covered by the Commercial General Liability and Auto Liability insurance required pursuant to this Agreement. Contractor shall provide NCTD a conforming ISO CG 24 04 Endorsement for Commercial General Liability and ISO CA 04 43 Endorsement for Auto Liability, respectively.

g. Insurance Certificate Submittals

NCTD uses PlanetBids to track and verify insurance coverage. Contractor shall include the Agreement number and/or task order number on all insurance- related correspondence submitted to PlanetBids (i.e., the insurance certificate itself).

Initial Certificate Submittal

After Contractor's receipt of the Notice of Intent to Negotiate, Contractor shall submit its certificates of insurance through the PlanetBids portal established for NCTD. NCTD will not execute the Agreement and Contractor shall not commence work unless Contractor has submitted compliant Certificates of Insurance (COIs) and endorsements have been received, and NCTD has deemed the Contractor as compliant with the insurance requirements.

Renewal Certificate Submittals

Contractor shall cause its insurance agents to comply with requests for updated information from PlanetBids on no less than an annual basis. Contractor is responsible for ensuring that its agents send NCTD updated certificates of insurance throughout the term of the Agreement via PlanetBids. NCTD reserves the right to terminate this Agreement or to withhold payments to Contractor if Contractor fails to maintain compliance with the insurance requirements of this Agreement, including providing current certificates of insurance and endorsements to PlanetBids.

h. No Limitation on Liabilities and Obligations

The requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by NCTD are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement, including, but not limited to, the provisions concerning indemnification.

The specified insurance limits are minimum amounts to be provided, and any insurance maintained by Contractor above such limits shall provide protection to NCTD and all additional insureds to the same extent as other insurance provided by Contractor.

i. Coverage for Subcontractors

Insurance required of the Contractor shall be provided by all subcontractors or by Contractor on behalf of all subcontractors to cover their services performed under this Agreement. Contractor shall not require subcontractors to maintain insurance amounts that are disproportionate to the risk exposure, scope of work and/or dollar value of work subcontracted. Contractor shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to any subcontractor.

j. No Waiver of Requirements

Acceptance by NCTD of a certificate or endorsement that varies from the requirements in this section shall not constitute a waiver by NCTD of strict compliance with the provisions herein.

k. waiver and release of liability for auto liability and/or Workers' Compensation insurance

Notwithstanding the foregoing section, Contractor may be granted a waiver of the requirements in this section under the following conditions:

If Contractor does not purchase Workers' Compensation insurance because it has no employees or it has fewer employees than is mandated by the Workers' Compensation statutes, regulations, and applicable to employers in the state of California, then it will be required to sign the Workers' Compensation Waiver and Release of Liability Agreement in order to be allowed to perform work or services for NCTD. The document is available from the Procurement and Contract Administration Division.

If Contractor does not purchase Auto Liability insurance because it has no vehicles that will be used in the course of performing work pursuant to this Agreement, and its business will not utilize hired or non-owned vehicles in the course of performing work pursuant to this Agreement in the state of California, then it will be required to sign the Automobile Liability Waiver and Release of Liability Agreement in order to be allowed to perform work or services for NCTD. The document is available from the Procurement and Contract Administration Division. Until the Waiver is signed or Auto Liability insurance consistent with this Agreement is purchased and approved by NCTD, Contractor is not authorized to use a vehicle in the course of performing work pursuant to this Agreement.

I. Self-Insured Retentions

Any self-insured retentions must be declared to NCTD. At the option of NCTD, the Contractor shall provide a financial guarantee satisfactory to NCTD guaranteeing payment of losses and related investigations, claim administration and defense expenses.

m. Claims-Made Coverages

If any of the Contractor's insurance is written on a claims-made form:

The insurance coverage period must commence before the effective date of the Agreement or the beginning of work performed pursuant to the Agreement.

Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of work under the Agreement.

If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Contractor must purchase an extended reporting coverage for a minimum of three years after completion of work under the Agreement.

A copy of the claims reporting requirements must be submitted to NCTD for review.

For Pollution Liability, if the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Pollution Liability policy shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.

n. Cross-Liability Coverage

If Contractor's liability policies do not contain the standard ISO separation of insured's condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

o. Additional Insureds

The Commercial General Liability, Auto Liability, and if applicable, the Pollution Liability policies shall name in the endorsements and schedules as additional insured, North County Transit District (NCTD) and its directors, officers, agents, employees, and designated volunteers. All Agreements requiring railroad protective liability insurance shall name in the endorsement and schedules as additional insured the following entities, including their directors, officers, agents and employees as their interests may appear:

- North County Transit District (NCTD)
- Burlington Northern Santa Fe Railway (BNSF)
- AMTRAK
- San Diego Metropolitan Transit System (MTS)
- San Diego Trolley, Inc. (SDTI)
- San Diego Transit Corporation (SDTC)

p. Minimum Policy Limits and Requirements

Prior to performing any Work, Contractor shall provide proof and maintain limits no less than the following coverages.

Insurance Type	Requirements	Limits
Commercial General Liability (CGL)	Coverage shall conform to ISO Form CG 00 01 covering CGL on an "occurrence" basis. Policy shall include all elements of Coverages A, B and C.	Limits no less than \$2,000,000 - per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall be twice the required occurrence limit. The policy shall be issued on an occurrence basis.
Automobile Liability	Coverage shall conform to ISO Form CA 00 01 covering any auto (Code 1).	Limits no less than \$1,000,000 - per accident for bodily injury and property damage. The policy shall be issued on a combined single limit. For services rendered within 50 feet of the railroad tracks, Contractor shall provide Automobile Liability Insurance with limit of no less than \$2,000,000 per accident for bodily injury and property damage.

Insurance Type	Requirements	Limits
Workers' Compensation and Employer's Liability	<p>Insurance shall cover or insure under the applicable laws relating to workers' compensation insurance, all employees working on or about the Right-of-Way, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof.</p> <p>Not required for sole proprietors or companies with no employees. Verifiable proof of exemption shall be required by Contractor.</p>	<p>As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident; \$1,000,000 policy limit bodily injury by disease; and \$1,000,000 each employee bodily injury by disease.</p> <p>For services rendered within 50 feet of the railroad tracks, Contractor shall provide Employer's Liability Insurance with limit of no less than \$2,000,000 per accident; \$2,000,000 policy limit bodily injury by disease; and \$2,000,000 each employee bodily injury by disease.</p>
Railroad Protective Liability Insurance	<p>Coverage shall conform to ISO Form CG 24 17.</p> <p>Policy to cover the operations performed by Contractor or any subcontractor or subcontractor of Permittee within 50 feet vertically or horizontally of railroad tracks.</p> <p>The RRL Policy shall be issued in the names of the NCTD, MTS, SDTI, SDTC, BNSF, Transit America, and AMTRAK.</p> <p>The Railroad Protective Liability Insurance policy shall have: Term: Task Order Period of Performance. The Contractor shall be listed as the covered firm with Automatic Coverage included for Contractor's subcontractors and their subcontractors.</p>	<p>Limits no less than \$3,000,000 per occurrence, combined single limit, for Coverages A and B. An annual aggregate of \$6,000,000 shall apply.</p> <p>Additionally, Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy.</p>

Insurance Type	Requirements	Limits

ARTICLE 5 – STANDARDS

A. STANDARD OF CONDUCT

Contractor is obligated to comply with NCTD's Standard of Conduct, which can be found in the following link: <https://gonctd.com/wp-content/uploads/2022/02/GM-0008-Standard-of-Conduct.pdf>

B. BUSINESS ETHICS EXPECTATIONS

During the performance of work under the Agreement, Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the dealings with NCTD.

Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with NCTD's best interests. These obligations shall apply to the activities of Contractor employees, agents, subcontractors, material suppliers (or their representatives), etc. **The Contractor is responsible for implementing and maintaining an internal compliance program to ensure compliance with Agreement requirements and to monitor business ethics and potential conflicts of interest.**

Contractor employees, agents, subcontractors, and material suppliers (or their representatives) should not make or provide to be made any employment, gifts, entertainment (liquor, lodging, travel, food, and tickets to public functions (sports events, theater, etc.), payments, loans, free work, substantially discounted work, or other considerations to NCTD representatives, employees, or their relatives. Similarly, Contractor employees, agents, or subcontractors (or their relatives) should not receive any commissions, gifts, entertainment, payments, loans, free work, substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with any work performed under the Agreement.

Contractor agrees to notify NCTD's Compliance Officer, within forty-eight (48) hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this article.

Upon request by NCTD, Contractor agrees to provide a certified Management Representation Letter executed by Contractor representatives in a form agreeable to NCTD stating that it is not aware of any situations violating the business ethics expectations outlined in this Agreement or any similar potential conflict of interest situations.

Contractor shall permit interviews of employees, reviews, and audits of accounting or other records by NCTD representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Contractor employees, agents, representatives, vendors, subcontractors, and other third parties paid by Contractor in their relations with NCTD's current or former employees or employee relatives.

Contractor agrees to include this clause in all contracts with Subcontractors and payees receiving more than ten thousand dollars (\$10,000) in funds in connection with this Agreement.

C. PERFORMANCE OF WORK ON NCTD PROPERTY

NCTD is committed to maintaining a safe and respectful environment at all its facilities and properties for the benefit its employees, customers, business partners, and visitors. To support that goal, NCTD requires that the Contractor adhere to reasonable standards of conduct while working on or in NCTD facilities and property. Additionally, use of any NCTD systems, tools, or physical assets must likewise be in accordance with established requirements. Specific areas of compliance include but are not limited to:

- a. NCTD Identification Badges – For safety and security purposes the Contractor must comply with NCTD requirements regarding utilization of Identification Badges while on/in NCTD properties/facilities as requested by NCTD staff.
- b. No Discrimination/Harassment – Employees of the Contractor are expected to conduct themselves in a professional, ethical, and respectful manner at all times, and refrain from any conduct or actions which could constitute harassment or discrimination towards employees, customers, business partners, visitors.
- c. Drug/ Alcohol – The Contractor shall maintain compliance with NCTD's status as a Drug Free Workplace.
- d. Electronic Systems – The Contractor's employees or representative who are utilizing NCTD electronic systems, including computers, telephones, facsimile machines, etc., shall ensure they are utilized solely for business purposes related to direct fulfillment of the Work. Additionally, the Contractor shall comply with any instructions or requirements of NCTD Information Technology staff related to use of said systems.

Based upon individual Agreement parameters, solely in NCTD's determination, the Contractor may be required to provide additional information to NCTD to ensure compliance with the foregoing items, and/or other reasonable business and operational needs.

D. SOCIAL MEDIA

Contractor is prohibited from using any social media to reference any ongoing bid or solicitation process without NCTD's express written permission.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

A. SHOP DRAWINGS AND SAMPLES

After checking and verifying all field measurements and after complying with applicable procedures specified in the Agreement Documents, the Contractor shall submit to NCTD for the design consultant's or NCTD's review, all shop drawings at a time specified by both parties.

Before submittal of each shop drawing or sample, the Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated each shop drawing or sample with other shop drawings and samples and with the requirements of the Work and the IFB.

B. SUBMITTAL ACCEPTANCE

NCTD staff will review and approve any shop drawings or samples. Staff's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Agreement Documents and be compatible with the design concept of the completed project as a functioning whole as indicated by the Agreement Documents. NCTD staff's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Agreement Documents or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make corrections required by NCTD staff and shall return the required number of corrected copies of shop drawings and submit as required new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by NCTD staff on previous submittals.

NCTD staff's review and approval of shop drawings or samples shall not relieve the Contractor from responsibility for any variation from the requirements of the Agreement Documents unless the Contractor has in writing called the NCTD Staff's attention to each such variation at the time of submission and the design consultant or NCTD has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the shop drawing or sample approval; nor will any approval by the NCTD Staff relieve the Contractor from responsibility for complying with the Agreement Documents.

C. PERMITS AND INSPECTION COSTS

The Contractor shall obtain such permits as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the Work is located, and the Contractor shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency. The Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. The Contractor shall pay all charges of utility owners for connection to the Work. The specific cost paid by the Contractor for permits, licenses and connection fees will be reimbursed at an amount equal to the exact cost, and paid as part of a progress payment, except as set forth herein regarding the Construction General Storm Water Permit. Any permit, license or utility costs shall be coordinated by the Contractor for payment by NCTD directly to the agency after submittal of documentation, except as set forth herein regarding the Construction General Storm Water Permit. Estimates or projections of these costs were not included in the bid, except as set forth herein regarding the Construction General Storm Water Permit.

D. PROTECTION OF EXISTING IMPROVEMENTS

The Contractor shall be responsible for the protection of any existing improvements and public utilities within and adjacent to the job site and shall exercise due caution to avoid damage to such improvements.

Except as otherwise provided in this Agreement, the Contractor shall repair or replace all existing improvements and public utilities damaged or removed as a result of the Work. Repairs and replacements shall be at least equal to existing improvements and shall match them in finish and dimension. All costs for protecting, removing, restoring and replacing existing improvements shall be borne solely by the Contractor.

E. SITE ACCESS AND STORAGE

1. NCTD's facilities operate twenty-four (24) hours/day, seven (7) days a week. As such the Contractor shall not disrupt routine daily operations during the course of performing the Work.
2. No driveway or existing access to existing facilities and parking area can be blocked or obstructed without approval from the NCTD facility manager.
3. Any areas requiring trenching or open excavation within the boundaries of existing facilities shall be appropriately covered at all times with trench plates or other devices so as to allow continuous passage by busses or other large vehicles.
4. Wherever necessary, the Contractor shall provide suitable temporary bridges or steel plates over

unfilled excavations, except in such cases as the Contractor shall secure the written consent of the individuals or authorities concerned to omit such temporary bridges or steel plates, which written consent shall be delivered to NCTD prior to excavation. All such bridges or steel plates shall be maintained in service until access is provided across the backfilled excavation. Temporary bridges or steel plates for street and highway crossing shall conform to the requirements of the authority having jurisdiction in each case, and the Contractor shall adopt designs furnished by said authority for such bridges or steel plates, or shall submit design to said authority for approval, as may be required.

5. Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, alleyway, or parking area during the performance of the Work hereunder, and it shall so conduct its operations as not to interfere unnecessarily with the authorized work of utility companies or other agencies in such streets, alleyways, or parking areas. No street shall be closed to the public without first obtaining permission of NCTD and proper governmental authority. Where excavation is being performed in primary streets or highways, one lane in each direction shall be kept open to traffic at all times unless otherwise indicated. Toe boards shall be provided to retain excavated material if required by NCTD or the agency having jurisdiction over the street or highway. Fire hydrants on or adjacent to the Work shall be kept accessible to fire-fighting equipment at all times. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks and the proper functioning of all gutters, storm drain inlets, and other drainage facilities.

6. For the protection of traffic in public or private streets and ways, the Contractor shall provide, place, and maintain all necessary barricades, traffic cones, warning signs, lights, and other safety devices in accordance with the requirements of the most recent "Manual of Uniform Traffic Control Devices, Part VI - Traffic Controls for Street and Highway Construction and Maintenance Operations," published by U.S. Department of Transportation, Federal Highway Administration (ANSI D6.1).

7. The Contractor shall take all necessary precautions for the protection of the Work and the safety of the public. All barricades and obstructions shall be illuminated at night, and all lights shall be kept burning from sunset until sunrise. The Contractor shall station such guards or flaggers and shall conform to such special safety regulations relating to traffic control as may be required by the public authorities within their respective jurisdictions. All signs, signals, and barricades shall conform to the requirements of Cal-OSHA and Subpart G, Part 1926, of the OSHA Safety and Health Standards for construction, and other applicable state and federal laws, rules, and regulations.

8. Contractor shall request and arrange for a flag person when its personnel and equipment are within twenty (20) feet of the nearest rail.

F. QUALITY OF MATERIALS/COMPLIANCE WITH INDUSTRIAL SAFETY CODES

Even though certain parts, materials and work are purchased or contracted for by the Contractor from an outside source under a subcontract, or separate purchase, the Contractor shall assume full responsibility for the quality and suitability of all items. All equipment shall be in complete compliance with all requirements of the Laws of the State of California and the County of San Diego, as well as all applicable federal laws and regulations at date of installation.

G. DAMAGED MATERIALS OR EQUIPMENT

Any materials or equipment found to be damaged or defective at the time of delivery and are the Contractor's responsibility, shall be repaired, replaced or corrected by the Contractor without additional cost to NCTD. If the Contractor shall fail to comply within a reasonable time with any order of the Executive Director to repair/replace or correct damaged or defective work, then the Executive Director shall, upon written notice to the Contractor, have the authority to deduct the reasonable cost thereof from any compensation due to the Contractor.

H. COOPERATION WITH NCTD, PUBLIC UTILITIES COMPANIES AND ANY OTHER CONTRACTORS

Contractor will coordinate and cooperate with any other Contractors to ensure timely access to the site for all personnel and equipment involved in this work and the Work of any related contracts.

1. Removal or relocation of main or trunkline utility facilities: NCTD may have endeavored to determine the existence of utilities at the site of the Work from the records of the owners of known utilities in the vicinity of the work and may have shown the positions of these utilities as derived from such records on the plans. However, no excavations were made to verify the locations shown for underground utilities. The service connections to these utilities are not shown on the plans. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make his own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing work which could result in damage to such utilities. The Contractor shall immediately notify NCTD's Project Manager as to any utility discovered by him in a different position than shown on the plans or which is not shown on the plans.
2. Main or Trunk Line Facilities: Notwithstanding the above, pursuant to Section 4215 of the Government Code, as it may be amended from time to time, NCTD has the responsibility to identify, with reasonable accuracy, main or trunk line facilities on the plans and specifications. In the event that main or trunk line utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the invitation for bids, NCTD shall assume the responsibility for their timely removal, relocation, or protection.
3. The Contractor shall be compensated by NCTD for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing, relocating, protecting, or temporarily maintaining such main or trunk line utility facilities not indicated with reasonable accuracy in the plans and specifications, and for equipment in the project necessarily idled during such work. In this regard, Contractor will be required to do such work in accordance with the Agreement.
4. Alternatively, NCTD may make changes in the alignment and grade of the Work to obviate the necessity to remove, relocate, or temporarily maintain the utility, in accordance with the Agreement or NCTD may make arrangements with the owner of the utility for such work to be done at no cost to the Contractor.
5. The Contractor shall not be assessed a forfeiture for delay in completion of the project when such delay is caused by the failure of NCTD or the owner of the utility to provide for the removal, relocation, protection or temporary maintenance of all such main or trunk line facilities not indicated with reasonable accuracy.
6. Nothing herein shall preclude NCTD from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility. Nothing herein shall be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.
7. If the Contractor, while performing the Work, discovers utility facilities not identified by NCTD in the plans or specifications, it shall immediately notify NCTD and utility in writing.
8. The owner of the public utility shall have the sole discretion to perform repairs or relocation work or hire the Contractor to do such repairs or relocation work at a reasonable price.
9. Other Utilities: In case it should be necessary to remove, relocate, or temporarily maintain a utility because of interference with the work, the Work on the utility shall be performed and paid for as follows:

- a. When it is necessary to remove, relocate or temporarily maintain a service connection, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the Work on the service connection. The work on the service connection shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the service connection has the option of doing such work with its own forces or permitting the Work to be done by the Contractor.
 - b. When it is necessary to remove, relocate, or temporarily maintain a utility which is in the position shown on the plans, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the Work on the utility. The work on the utility shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the utility has the option of doing such work with its own forces or permitting the Work to be done by the Contractor.
 - c. When it is necessary to remove, relocate, or temporarily maintain a utility which is not shown on the plans or is in a position different from that shown on the plans and were it in the position shown on the plans would not need to be removed, relocated, or temporarily maintained, and the cost of which is not required to be borne by the owner thereof, NCTD will make arrangements with the owner of the utility for such work to be done at no cost to the Contractor, or will require the Contractor to do such work in accordance with the Agreement or will make changes in the alignment and grade of the Work to obviate the necessity to remove, relocate, or temporarily maintain the utility. Changes in alignment and grade will be ordered in accordance with the Agreement.
10. No representations are made that the obligations to move or temporarily maintain any utility and to pay the cost thereof is or is not required to be borne by the owner of such utility, and it shall be the responsibility of the Contractor to investigate to find out whether or not said cost is required to be borne by the owner of the utility.
11. The right is reserved to governmental agencies and to owners of utilities to enter at any time upon any street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the Work and for the purpose of maintaining and making repairs to their property.

I. HAZARDOUS COMMUNICATION PROGRAM

Notification to employees is required when materials that contain hazardous substances or mixtures are required on the Work. A Material Safety Data Sheet as described in Section 5194 of the California Code of Regulations shall be requested by the Contractor from the manufacturer of any hazardous product used.

Material usage shall be accomplished with strict adherence to California Division of Industrial Safety requirements and all manufacturer's warnings and application instructions listed on the Material Safety Data Sheet and on the product container label.

Payment for performing all Work necessary to provide safety measures shall be included in the prices bid for other items of work except where separate bid items for excavation safety are provided.

J. STORM WATER POLLUTION PREVENTION PLAN (SWPPP) OR EROSION AND SEDIMENT CONTROL PLAN (ESCP) REQUIREMENTS

1. Contractor's responsibilities shall include the following ESCP requirements:
 - a. Contractor shall provide an ESCP for the worksite(s). The ESCP shall include a description of the Best Management Practices (BMPs) Contractor will use to prevent sediment or other pollutants from leaving the worksite.
2. Contractor's responsibilities shall include the following SWPPP requirements:
 - b. Amendment, implementation, and monitoring of SWPPP, if coverage under the Construction General Storm Water Permit pursuant to applicable NCTD, local, state, and federal ordinances, laws, rules, and regulations is required, for, among other things, the purpose of preventing the discharges of pollutants from the construction site into the receiving waters. This includes, but is not limited to, elimination of non-storm water pollution discharges such as improper dumping, spills or leakage from storage tanks or transfer areas.
 - c. Amendment, implementation and monitoring of the ESCP, if covered under the Construction General Storm Water Permit, industrial general permit, or an individual National Pollutant Discharge Elimination System (NPDES) permit pursuant to applicable NCTD, local, state and federal ordinances, laws, rules and regulations is not required, for, among other things, the purpose of preventing the discharges of pollutants from the construction site into the receiving waters. This includes, but is not limited to, elimination of non-storm water pollution discharges such as improper dumping, spills or leakage from storage tanks or transfer areas.
 - d. Compliance with all NCTD, local, state, and federal ordinances, laws, rules and regulations governing storm water discharges, including, but not limited to, obtaining coverage under and complying with the Construction General Storm Water Permit.
 - e. Payment of fees as required by the State Water Resources Control Board (SWRCB).
 - f. Submittal of all "Permit Registration Documents" as required through the SWRCB SMARTS online system.
 - g. Certification, as required, that the project has met all of the conditions of the Construction General Storm Water Permit, including but not limited to post construction requirements.
 - h. Upon issuance of NTP and prior to any construction or land disturbance activities, Contractor must obtain a Waste Dischargers Identification (WDID) number, if coverage under the Construction General Storm Water Permit pursuant to applicable NCTD, local, state and federal ordinances, laws, rules and regulations is required.
3. References:
 - a. NPDES General Permit No CAS000002.
 - b. SWRCB Construction General Storm Water Permit.
 - c. Storm Water Best Management Practice Handbook for Construction Activities (BMP Handbook) published by California Storm Water Quality Association (CASQA).
 - d. NCTD Storm Water Management Program (SWMP).
4. Submittals for projects subject to the Construction General Storm Water Permit
 - a. General: Comply with requirements of submittal acceptance prior to any construction or site disturbance.

- b. Submit Notice of Intent and all "Permit Registration Documents" required by SWRCB through SMARTS and pay applicable permit fees. All checks shall be made payable to the SWRCB. Copies of all permits and evidence that the Contractor has paid all fees shall be furnished to the NCTD Project Manager.
 - c. Submit QSP inspection data on a weekly basis to the NCTD Project Manager.
 - d. If the site is identified as Risk Level 3 and Linear Underground/Overhead Project (LUP) Type 3 in the SWPPP, submit all storm event sampling results as required by the Construction General Storm Water Permit no later than ten (10) days after the conclusion of the storm event to the NCTD Project Manager and to the SWRCB through SMARTS.
 - e. Submit certifications as required by the Construction General Storm Water Permit.
5. Submittals for projects not subject to the Construction General Storm Water Permit, industrial general permit, or an individual NPDES permit.
- a. General: Comply with requirements of submittal prior to any construction or site disturbance.

6. Products

Contractor shall use materials of a class, grade, and type needed to meet the performance requirements described in the NCTD SWMP and the BMP Handbook.

7. Execution

a. SWPPP Amendment

- i. A QSD shall amend the SWPPP included in Contractor's bidding package, as required to comply with applicable ordinances, laws, rules and regulations, which specifies BMP for the purpose of, among other things, preventing the discharges of pollutants from the construction site into the receiving waters. Without limiting the foregoing, the SWPPP shall be amended if one of the following condition(s) apply:
 - 1) The Contractor determines that the risk determination or the construction dates identified in the SWPPP included in the Contractor's bidding package should be amended, as required by the Construction General Storm Water Permit for the site, using the SWRCB methodology identified in the Construction General Storm Water Permit;
 - 2) Modifications to storm water control measures should be made in response to a change in design, construction, operation, or maintenance at the construction site that has or could have a significant effect on the discharge of pollutants into the receiving waters;
 - 3) If during inspections or investigations by Contractor, or by local, state, tribal, or federal officials, it is determined that the proposed or existing storm water controls are ineffective in eliminating or significantly minimizing pollutants in storm water discharges from the construction site; or
 - 4) Based on the results of an inspection, as necessary to properly document additional or modified BMPs designed to correct problems identified.

8. Amendment of the SWPPP must be completed in a timely manner.

- a. A QSD shall review the amended SWPPP with the Legally Responsible Person (LRP) or Approved Signatory (AS), as set forth further herein, prior to uploading the amended SWPPP or Change of Information (COI) to the SWRCB SMARTS Online System.
- b. A QSD shall amend the SWPPP for LUPs included in the Contractor's bidding package, if the project qualifies as a LUP, as required to comply with applicable ordinances, laws, rules and regulations, which specifies Best Management Practices (BMP) for the purpose of, among other things, preventing the discharges of pollutants from the construction site into the receiving waters. Without limiting the foregoing, the SWPPP shall be amended if one of the following conditions apply:
 - i. The Contractor determines that the risk determination or the construction dates identified in the SWPPP included in the Contractor's bidding package should be amended, as required by the Construction General Storm Water Permit for the site, using the SWRCB methodology identified in the Construction General Storm Water Permit;
 - ii. Modifications to storm water control measures should be made in response to a change in design, construction, operation, or maintenance at the construction site that has or could have a significant effect on the discharge of pollutants into the receiving waters;
 - iii. If during inspections or investigations by the Contractor, or by local, state, tribal, or federal officials, it is determined that the proposed or existing storm water controls are ineffective in eliminating or significantly minimizing pollutants in storm water discharges from the construction site; or
 - iv. Based on the results of an inspection, as necessary to properly document additional or modified BMPs designed to correct problems identified.

9. Amendment of the SWPPP must be completed in a timely manner.

- a. A QSD shall review the amended SWPPP for the LUP with the Legally Responsible Person (LRP) or Approved Signatory (AS), as set forth further herein, prior to uploading the Change of Information or the amended SWPPP to the SWRCB SMARTS Online System.
- b. The Contractor shall comply with all the requirements in the NCTD SWMP and amend the SWPPP in the format required by the most current NCTD SWPPP Template.

10. ESCP Amendment

- a. A California licensed engineer shall amend the ESCP included in the bidding package, as required to comply with the NCTD SWMP and applicable ordinances, laws, rules and regulations, to specify BMP for the purpose of, among other things, preventing the discharges of pollutants from the construction site into the receiving waters. Without limiting the foregoing, the ESCP shall be amended if one of the following condition(s) apply:
 - i. The Contractor determines that the risk determination or the construction dates identified in the ESCP included in the Contractor's bidding package should be amended, as required by the NCTD SWMP for the site using the methodology identified in the NCTD SWMP;
 - ii. Modifications to storm water control measures should be made in response to a change in design, construction, operation, or maintenance at the construction site that has or could have a significant effect on the discharge of pollutants into the receiving waters of the United States;
 - iii. If during inspections or investigations by Contractor, or by local, state, tribal, or federal

officials, it is determined that the proposed or existing storm water controls are ineffective in eliminating or significantly minimizing pollutants in storm water discharges from the construction site; or

- iv. Based on the results of an inspection, as necessary to properly document additional or modified BMPs designed to correct problems identified.

11. Amendment of the ESCP must be completed in a timely manner.

- a. A California licensed engineer shall amend the ESCP with the Legally Responsible Person (LRP) or Approved Signatory (AS), as set forth further herein, prior to performing any construction activities.
- b. The Contractor shall comply with all the requirements in the NCTD SWMP and amend the ESCP in the format required by the most current NCTD ESCP Template.
- c. SWPPP Implementation. The Contractor's QSP shall implement the SWPPP pursuant to the requirements of the Construction General Storm Water Permit.
- d. ESCP Implementation. The Contractor's California licensed engineer shall implement the ESCP pursuant to the requirements of the NCTD SWMP.

12. SWPPP Construction Site Monitoring Program (CSMP)

- a. The Contractor shall conduct examinations of storm water pollution prevention controls according to the monitoring requirements identified for the projects risk level as defined by the Construction General Storm Water Permit.
- b. The Contractor shall prepare and maintain, at the jobsite, a log of completed checklists using the CSMP Checklist Template of the most current NCTD SWPPP Template. Copies of the CSMP Checklist shall be submitted to the NCTD Project Manager on a weekly basis.
- c. The Contractor shall distribute copies of the most current SWPPP and all "Permit Registration Documents" to the Contractor's superintendent and subcontractors. One (1) copy shall be posted on site at all times.
- d. Under no circumstances shall the Contractor restrict NCTD or an assigned consultant from performing impromptu inspections at the project site.

13. ESCP Monitoring Program

- a. The Contractor shall conduct examinations of storm water pollution prevention controls as defined in the prepared and approved ESCP.
- b. Under no circumstances shall the Contractor restrict NCTD or an assigned consultant from performing impromptu inspections at the project site.

14. SWPPP Liabilities and Penalties

- a. Without limiting the provisions set forth in elsewhere in the Agreement, compliance with all federal, state, local and NCTD ordinances, laws, rules and regulations, including but not limited to the Clean Water Act and the Construction General Storm Water Permit is the sole responsibility of the Contractor. For any fine(s) levied against NCTD due to non-compliance by the Contractor, NCTD will have the option to either require payment by Contractor of, or deduct from the final payment due the Contractor, or withhold sufficient amounts as set forth further under the section

of this Agreement entitled "Retention," the total amount of the fine(s) levied on NCTD and all costs and expenses incurred by NCTD, including but not limited to compliance costs and attorneys' fees.

- b. Site inspections and/or review of the SWPPP and the completed CSMP checklist by the NCTD Project Manager shall not relieve the Contractor from liabilities arising from non-compliance with applicable ordinances, laws, rules and regulations including but not limited to compliance with the Construction General Storm Water Permit.
- c. Payment of penalties for non-compliance shall be the sole responsibility of the Contractor.
- d. The Contractor shall complete corrections within seven (7) days of non-compliance notices.

15. SWPPP Documentation and Post-Construction

- a. The Contractor shall leave in place storm water pollution prevention controls needed for post-construction storm water management as required pursuant to the Construction General Storm Water Permit and remove those that are not needed as determined by NCTD. Thereafter, the remaining controls will be maintained by NCTD. The Contractor shall ensure that the post-construction requirements identified in the Construction General Storm Water Permit have been complied with and that post-construction controls have been properly installed.
 - b. The Contractor shall provide completed documentation including but not limited to CSMP checklists, SWPPP amendments, compliance certifications and related documents to the NCTD Project Manager. A post-construction storm water operation and management plan, consistent with the Construction General Storm Water Permit and approved by NCTD shall be in place at the completion of the Agreement.
 - c. The Contractor shall submit to NCTD a completed Change of Information for any change of information (Construction Site Information and Material Handling/Management Practices) prior to submittal via SMARTS.
16. The Contractor shall submit to the NCTD Project Manager at the completion of the Agreement, a completed Notice of Termination (NOT) as required by SWRCB to terminate the coverage under the general permit. Contractor shall furnish a copy of the completed and approved NOT to the SWRCB via SMARTS.

K. FLAGGING

- 1. At least one (1) qualified NCTD flagger is required to be onsite whenever the Contractor, its subcontractors or material suppliers are working on the railroad right-of-way. Contractor's employees are prohibited from positioning themselves, placing material, or positioning machinery on the railroad right-of-way, unless under control of a NCTD railroad flagger at each work location.
- 2. A flagger can only protect workers that are both in line of sight and able to hear the flagger's air horn. If work is spread out over a section of track and a single flagger cannot protect all personnel and equipment, additional flaggers will be required.
- 3. All workers on site shall attend job briefings as are required under the RWP Manual at the start of each work shift and at each time conditions affecting worker safety change.
- 4. The flagger may utilize "Form B" protection for this project. The Contractor shall be required to clear live track when the train is within two (2) miles of the work site. All workers, equipment, and materials

shall be cleared from the live track and all equipment shall be held at idle until the train has passed through the Form B limits and the flagger has authorized the resumption of work. The minimum distance for workers, material, and equipment shall be at the discretion of the flagger.

5. The flagger may utilize "Track and Time" protection for the project. The Contractor shall be required to clear live track prior to expiration of Track and Time protection. Track and Time protection shall be granted in a manner that does not delay train movements. All workers, equipment and materials shall be cleared from the track and all equipment shall be held at idle before the flagger has released his Track and Time authority. The Contractor will not be permitted to resume work until the flagger regains Track and Time authority and authorizes the start of work. The minimum clearance distance for workers, material, and equipment shall be at the discretion of the flagger.

6. NCTD's flagger of record for its rail right-of-way is Jacobs Project Management Co. (Jacobs). All flagging in NCTD's rail right-of-way shall be provided by Jacobs under a contract between Jacobs and NCTD. NCTD will provide flagging services for the project at no cost to the Contractor up to an allowance of [insert number] hours. Jacobs will invoice NCTD directly for these hours, however, Contractor shall reimburse NCTD for flagging services that are required in excess of the allowance. NCTD will deduct the expense for those hours at a rate of \$138.91 per hour effective June 25, 2023, with a rate increase of 3% annually beginning June 25, 2026, from Contractor's next monthly invoice.

7. A minimum of twenty-one (21) days in advance, unless otherwise directed by NCTD, the Contractor shall submit a written request to Jacobs using the Flagging Request Form. Additional information regarding flagging requests and scheduling can be found at <https://gonctd.com/about-nctd/accountability/working-around-the-rails/>. On-site work shall not begin until the Contractor receives confirmation of flagging services.

8. Flagging personnel are required to have in their possession Track Bulletins and Orders that are issued daily and the proper tools (air horns, radios, flags etc.) requiring personnel to report to the Oceanside Maintenance of Way (MOW) at the beginning of their first shift of the day.

9. There is a minimum billing of four (4) hours for flagging services, not to exceed sixteen (16) hours per day for each flagger, which includes actual travel time, preparation, set-up, break-down and lunch if necessary. For shifts that exceed four (4) hours, a lunch period of thirty (30) minutes must be taken within the first five (5) hours of the start of a shift as per State of California Labor Code.

10. Work which requires shifts longer than twelve (12) hours will require additional shifts to be called out and the flagging hours will be billed the minimum eight (8) hours for each additional shift.

11. Invoicing will be in hour increments and subject to availability.

12. Seventy-two (72) hour advance notice is required for cancellation, unless otherwise directed by NCTD. If less than seventy-two (72) hour notification is given, the hours will not be considered hours agreed to by NCTD and Contractor will be billed the full amount of the scheduled flagging services that Jacobs bills NCTD. These charges may not be applied to the contractual flagging allowance but are required to be paid for by the Contractor. NCTD will deduct such charges from the Contractor's next monthly invoice.

13. Any night shift that is less than forty (40) hours in one (1) week will be subject to an eight (8) hour daily rate charge to return the flagger to his normal day shift.

L. SIGNAL MAINTAINER

1. A signal maintainer is required any time the Contractor needs access to a signal house or signal cables need to be marked-out.

2. NCTD will provide signal maintainer services for the project at no cost to the Contractor up to an allowance of [insert number] hours. The Contractor shall reimburse NCTD for signal maintainer services that are required in excess of the allowance at a rate of \$[obtain from DSD] per hour.
3. A minimum of twenty-one (21) days in advance, the Contractor shall submit a written request using the Right of Way Support Services Request Form, which also will cover Track Inspection. The form is available here: <https://gonctd.com/about-nctd/accountability/working-around-the-rails/>. The form must indicate the proposed dates and times and number of signal maintainers required. Changes to the number of signal maintainers required shall be submitted using the same form a minimum of twenty-one (21) days in advance. On-site work shall not begin until the Contractor receives confirmation of signal support services.
4. Signal Maintainers shall report to the Oceanside Maintenance of Way (MOW) at the beginning of their first shift of the day.
5. There is a minimum of four (4) hours for a Signal Maintainer, not to exceed twelve (12) hours per day for each Signal Maintainer which includes actual travel time, preparation, set-up, break down and lunch if necessary. For shifts that exceed four (4) hours, a lunch period of thirty (30) minutes must be taken within the first five (5) hours of the start of a shift as per State of California Labor Code.
6. Billing for signal maintainer shall be in four (4), eight (8), ten (10) or twelve (12) hour increments.
7. Twenty-one (21) day advance notice is required for cancellation. If less than twenty-one (21) days notification is given the Contractor will be billed the full amount of time scheduled for each signal maintainer. These charges may not be applied to the contractual signal allowance but are required to be paid for by Contractor. NCTD will deduct such charges from the Contractor next monthly invoice.
8. Any night shift that is less than forty (40) hours in one (1) week will be subject to an eight (8) hour daily rate charge to return the flagger to his normal day shift.

M. CAMP PENDLETON BASE ACCESS

In order to perform work under this Agreement, the Contractor and any subcontractor(s) will be required to obtain Marine Corps Base Camp Pendleton (Camp Pendleton) base access and to maintain base access during the term of the Agreement. Camp Pendleton requires a Base Access Form from NCTD's Administration Department and may also require the completion of the Defense Biometric Identification System (DBIDS) pre-enrollment process (depending on length of time needed for access on Base). Individual employees will need to personally take the Base Access Form to the Camp Pendleton Base Control Access Branch (BCAB) office to obtain an access badge. Individual employees will need to have a REAL ID card in order to gain Camp Pendleton access. Should the employee not have a REAL ID, a Passport with a Driver's License will suffice. If the individual does not have a passport, a Social Security Card, Birth Certificate, and Driver's License will suffice. The Contractor's Project Manager identified in the Agreement will be the sole point of contact for requesting Base Access Forms from NCTD. Requests made to NCTD by anyone other than the listed Project Manager shall be rejected and will not be processed.

To obtain the Base Access Form follow the steps below:

1. Send an email request to administration@nctd.org at least ten (10) business days prior to the needing of access onto Camp Pendleton. The email's subject line **must include** the NCTD contract number. The body of the email must contain the following information;
 - a. The name of the person(s) requiring base access
 - b. The two-letter abbreviation of the State or Province where the attendee's Driver License/Identification Card/Passport was issued (whichever is going to be used for identification purposes)

- c. The Driver License/ID number/Passport Number for b above (inclusive of hyphens or other punctuations)
 - d. Project description and the dates and times access will be needed
2. NCTD will send the request to BCAB and will inform the requester of the date they can go to the BCAB to obtain their temporary pass. On that date the requestor shall go to the BCAB, in-person, with the Base Access Form and proper identification. Note the BCAB is closed on Fridays, and there may be long wait times.
3. This process can take up to ten (10) business days. Untimely requests may be processed with no guaranty access will be granted in time, so please plan accordingly.

NCTD staff will not escort Contractor's or its subcontractors' staff without base passes onto Camp Pendleton. Failure to adhere to the Camp Pendleton Access requirements may lead to a determination that Contractor is in breach of contract.

ARTICLE 7 – CHANGES

A. CHANGE IN WORK

NCTD may, without affecting the validity of this Agreement and without notice to sureties, order changes, modifications, deletions and changed work by issuance of written change orders. Contractor shall not be entitled to extra time or compensation for any changed work performed unless NCTD has issued a Field Work Directive (FWD) prior to start of changed work, designating the changed work and providing an estimate for the amount of compensation for the work. If a change order deletes any work, the contract price shall be reduced by a fair and reasonable amount.

If the Contractor should claim that any instruction, request, drawings, specification, action, condition, omission, default, or other situation obligates NCTD to pay additional compensation to the Contractor or to grant an extension of time for the completion of the Agreement, or constitutes a waiver of any provision in the Agreement, it shall notify NCTD, in writing, of such claim within the ten (10) days from the date it has actual or constructive notice of the factual basis supporting the claim. The Contractor's failure to notify NCTD within such ten (10) day period shall be deemed a waiver and relinquishment of the claim against NCTD. If such notice be given within the specified time, the procedure for its consideration shall be as stated in this Agreement.

Any claim for extension of time caused thereby shall be adjusted as described under the section of this Agreement entitled "EXTENSION OF TIME."

All compensation changes authorized by NCTD will be based upon the submittal of itemized and detailed statements. Work shall be changed and the contract price and completion date shall be modified only as set out in the written change orders.

Failure to agree on an adjustment of the contract price or extension of time for performance of the contract shall not excuse Contractor from proceeding with prosecution of the Work as changed.

B. PAYMENT FOR CHANGED WORK

Value and payment of any such work change, or deduction shall be determined at the discretion of NCTD in one or more of the following ways:

1. Unit prices contained in Contractor's original bid and incorporated in Agreement Documents, unit prices contained in bid documents, or fixed by subsequent agreement between NCTD and Contractor. If Contractor and NCTD are unable to reach agreement based on unit prices, value and payment of work shall be determined by 2;

2. Acceptable lump sum bid from Contractor. If Contractor and NCTD are unable to reach agreement on lump sum price, value and payment of work shall be determined by 3;
3. On a time and expense basis as described below:

C. LUMP SUM CHANGE ORDERS

Changes in contract price resulting from changed work may be determined by a mutually agreed upon lump sum price. The Contractor's bid shall include a detailed breakdown of all labor and materials to be performed by his forces or the forces of his Subcontractors or material supplier. The breakdown shall include labor surcharge and sales tax cost. Whenever NCTD requests that the Contractor prepare a lump sum price in connection with the change order, the Contractor shall be entitled to all costs incurred in the preparation of that price. Such costs will be incorporated in the lump sum amount regardless of whether or not the lump sum amount is finally accepted by NCTD. NCTD shall determine sufficiency of cost breakdown.

If the change involves changed work to be performed entirely by the Contractor, compensations for such changed work shall be based on all direct costs* as listed in the detailed bid plus fifteen percent (15%) of such direct costs for overhead and profit, and one percent (1%) of such direct costs for bond. **Direct costs are defined as: Direct Hourly Rate Paid, Federal Unemployment Tax, Employers Medicare contribution, Employers Social Security contribution, State Employment Training Tax, State Unemployment Tax.* When the changed work involves Subcontractors and material suppliers, compensation for such work shall be based on all direct costs as listed by the Subcontractor or material supplier plus fifteen percent (15%) of such costs for the Subcontractor's or supplier's overhead and profit. The Contractor may add five percent (5%) to the Subcontractor or material supplier's bid for overhead and profit, and one percent (1%) for bond. The above allowances for overhead and profit shall include full compensation for any and all items, all overhead including superintendence, insurance premiums, taxes, field office expenses, extended overhead, home office overhead, and profit.

D. SUBCONTRACTOR MARKUP

It is understood that labor, materials, and equipment may be furnished by the Contractor or by the Subcontractor on behalf of the Contractor. When all or any part of the changed work is performed by a Subcontractor, the allowance specified herein shall be applied to the labor, materials, and equipment costs of the Subcontractor, to which the Contractor may add five percent (5%) of the Subcontractor's total cost for the changed work. Regardless of the number of hierarchical tiers of the Subcontractors, the five percent (5%) increase above the performing Subcontractor's total cost which includes the allowances for overhead and profit may be applied one time only.

E. DEDUCTIVE CHANGE ORDERS

When the change order involves Work omitted, the reduction of the Agreement price shall be based on all direct costs as listed in the detailed bid or escrow bid documents submitted by the Contractor and additional reduced overhead costs attributable to the Work omitted. No reduction will be made for profit originally attributable to the omitted Work.

F. TIME AND EXPENSE CHANGE ORDERS

To obtain payment for a time and expense change order, the Contractor shall submit a daily report to NCTD's Representative on forms approved by NCTD. Included are applicable delivery tickets, listing all labor, materials, and equipment involved for that day, and other services and expenditures when authorized. Failure to submit the daily report by the close of the next working day may waive any rights for that day. An attempt shall be made to reconcile the report daily, and it shall be signed by NCTD's Representative and the Contractor. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the Contractor.

The report shall:

1. Show names of workers, classifications, and hours worked.

2. Describe and list quantities of materials used.
3. Show type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.
4. Describe other services and expenditures in such detail as NCTD may require.

Payment to the Contractor for changed work performed on a time and expense basis shall consist of the actual necessary expense for doing the changed work, plus an allowance of NOT TO EXCEED fifteen percent (15%) of labor, material and equipment rental for overhead, and profits (based on risk) plus one percent (1%) for bond. This basis of payment applies to work done directly by the Contractor and to work done by a Subcontractor, except the one percent (1%) allowance for bond shall not apply to work performed by a Subcontractor. When the Work is done by a Subcontractor, the Contractor may add NOT TO EXCEED five percent (5%) to the Subcontractor's charges to cover overhead and profit (based on risk) and one percent (1%) for bond. Provisions for Subcontractor mark-up shall be the same as those detailed under "Lump Sum Change Orders" above. Non-direct labor costs, including superintendence, shall be considered part of the allowances for overhead and profit.

In determining time and expense compensation, the term "actual necessary expense" shall mean the sum of, 1) labor, 2) materials, 3) equipment, 4) professional services, and 5) other costs. Charges for such items shall mean the actual cost whether incurred by the Contractor, a Subcontractor or others. Vendors' invoices for material, equipment rental and other expenditures must be submitted with the request for payment. No payment shall be made without said documentation. The items making up "actual necessary expense" are defined as follows:

G. LABOR

The costs of labor will be the actual cost for wages of workers performing the changed work at the time the changed work is done, plus employer payments of payroll taxes, workers' compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs, resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements.

The use of a labor classification which would increase the changed work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. The labor cost for foreman shall be proportioned to all of their assigned work and only that applicable to changed work will be paid.

H. MATERIALS

The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available and delivered to the job site in the quantities involved, plus sales tax, freight and delivery.

NCTD reserves the right to approve materials and sources of supply, or to supply materials to the Contractor if necessary for the progress of the Work. No mark-up shall be applied to any material provided by NCTD.

I. TOOLS AND EQUIPMENT

No payment will be made for the use of tools which have a replacement value of two hundred dollars (\$200) or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Necessary loading and transportation costs for equipment used on the changed work

shall be included. When equipment is used on the changed work for more than four (4) days, weekly rates shall be used. When equipment is used on changed work for more than one month, monthly rates shall be used.

If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to NCTD than holding it at the Work site, it shall be returned unless the Contractor elects to keep it at the Work site, at no expense to NCTD.

All equipment shall be acceptable to the NCTD Representative, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and approved modifications shall be used to classify equipment and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

The reported rental time for equipment already at the Work site shall be the duration of its use on the changed work. This time begins when equipment is first put into actual operation on the changed work, plus the time required to move it from its previous site and back or to a closer site.

J. PROFESSIONAL SERVICES

Professional services may be included as an "actual necessary expense" when NCTD has determined that such services are necessary and the provision of such services has been authorized in writing by the NCTD Representative.

K. OTHER COSTS

Charges for items not included in 1 through 4 above may be included as "actual necessary expense" if such additional items are authorized in advance and in writing by the NCTD Representative.

L. DIFFERING SITE CONDITIONS

Drawings show existing conditions as determined by the NCTD Representative to exist, on the basis of a complete site examination and a thorough review of all applicable public documents, records and drawings. This is not, however, a warranty as to the exact dimensional preciseness of locations, sizes, depths, etc.

In the event of differing site conditions between that indicated on the Agreement Documents and actual conditions revealed during progress of the work, the following requirements are applicable:

1. The Contractor shall promptly, and before such conditions are disturbed, notify NCTD's Project Manager in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this Agreement; or, (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Agreement. NCTD's Project Manager shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor cost of, or the time required for, performance of any part of the Work under this Agreement, whether changed as a result of such conditions, an equitable adjustment shall be made according to the provisions in this Agreement for payment for changed work and the contract shall be modified in writing accordingly by the Contract Officer.
2. No claim of the Contractor under this clause shall be allowed unless the Contractor has given notice required in (1) above; provided, however, the time prescribed therefore may be extended by NCTD.
3. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.
4. In any case, where the Contractor believes compensations are required for work and services not covered by this Agreement, the Contractor shall promptly notify NCTD in writing of the intention to make a claim for such compensation before commencing the work. After notification is given, Contractor shall proceed without delay in accordance with Board's direction. If such notification is not given, no claim for such compensation will be considered. Such notice, when given, shall not be construed as providing the validity of the claim.

M. VALUE ENGINEERING CHANGE PROPOSALS (VECP)

NCTD encourages the Contractor to submit VECPs whenever Contractor identifies areas and/or instances in which improvements can be made, in order to avail NCTD of potential cost savings. The Contractor and NCTD will share equally any savings in the manner described below.

This subsection applies to a Contractor-developed and documented VECF that:

1. Requires a change to the Agreement Documents;
2. Reduces the Contract Price without impairing essential functions or characteristics of the Work, providing that it is not based solely upon a change in specified quantities; and

At a minimum, the following information shall be submitted by the Contractor with each VECP:

1. A description of the existing Contract Document requirements that are involved in the proposed change;
2. A description of the proposed change;
3. A discussion of the differences between the existing requirements and the proposed change, together with advantages and disadvantages of each changed item;
4. An itemization of the Contract requirements that must be changed if the VECP is accepted (e.g., drawing numbers and specifications);
5. A justification for changes in function or characteristics of each affected item, and the effect of the change on the performance of the end item;
6. A date or time by which a change order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on Contract completion time or delivers, schedule; and

A cost estimate for existing Contract requirements correlated to the Contractor's unit price or lump sum breakdown and the proposed changes in those requirements, including costs of development and implementation by the Contractor. The Contractor shall submit VECPs to NCTD. NCTD will process proposals expeditiously, but shall not be liable for any delay in acting upon any proposal submitted pursuant to this subsection. The Contractor may withdraw all or part of any VECP at any time prior to acceptance by NCTD, but shall be liable for costs incurred by NCTD in reviewing the proposal.

At its sole discretion, NCTD may accept, in whole or in part and by change order any VECP submitted pursuant to this Section. Designs for accepted VECPs will be prepared by NCTD for incorporation into the drawings and specifications. Until a change order is issued on a VECP, the Contractor shall remain obligated to perform in accordance with the Agreement Documents. The decision of NCTD as to the rejection or acceptance of any VECP shall be at the sole discretion of NCTD and is final.

If a VECP submitted by the Contractor pursuant to this subsection is accepted, the Contract Price shall be adjusted based upon an equal sharing (50%/50%) of the Net Savings (NS) by the Contractor and NCTD expressed by the following formula:

1. NS is defined as gross savings (GS) less the Contractor's Costs (CC) and less NCTD's Costs (NC); $NS = GS - CC - NC$.
2. GS to the Contractor means the difference between the cost of performing the Work according to the existing requirement and the cost to perform the Work according to the proposed change. In each instance, the Contractor's profit shall not be considered part of the cost.
3. CC Means reasonable Costs incurred by the Contractor in preparing the VECP and making the change, such as cancellation or restocking charges.
4. NCTD's costs means reasonable costs incurred by NCTD for evaluating and implementing the VECP, such as testing, redesign, and effect on other contracts.
5. The Contractor is not entitled to share in either collateral or concurrent future Contract savings. Collateral savings are the measurable net reductions in NCTD's costs of operation that result from the VECP including maintenance, logistics, and NCTD-furnished property. Concurrent Contract savings

cover the reductions in the cost of performance of other Contracts the Contractor is participating in for essentially the same item resulting from a VECP submitted by the Contractor.

6. The Contractor's profit shall not be reduced by application of the VECP.

The Contractor shall include appropriate VECP provisions in all subcontracts of twenty-five thousand dollars (\$25,000) or greater, and may include those provisions in any subcontract. Subcontracts shall state that any benefits accruing to the Contractor as a result of an accepted VECP initiated by a Subcontractor shall be shared by the Contractor and the Subcontractor in a manner specified in the contract between them. Concurrent contract savings on other NCTD contracts where the Subcontractor is participating are not allowable.

Subject to the provisions of the California Public Records Act, the Contractor may restrict NCTD's right to use any sheet of a VECP or the supporting data thereof in accordance with the terms of the following legend, if the legend is marked on the sheet:

"Data supplied pursuant to the subsection entitled VALUE ENGINEERING CHANGE PROPOSAL (VECP) herein for the Contract shall not be disclosed to any outside person and/or agency, and /or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under said subsection. This restriction does not limit NCTD's right to use information contained in this VECP if it is or has been obtained, or is otherwise available, from the Contractor or from another source without limitations. If a VECP is accepted by NCTD after the use of the data in an evaluation, NCTD may duplicate, use, and/or disclose any data reasonably necessary to the full utilization of the VECP, as accepted, in any manner and for any purpose whatsoever, NCTD may allow others to do so as well."

ARTICLE 8 – SCHEDULES

A. DELAYS

Avoidable Delays: Avoidable delays in the prosecution of the Work shall include all delays which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or its subcontractors. Avoidable delays include:

1. Delays which may in themselves be unavoidable but which affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work or the completion of the whole work within the contract time.
2. Time associated with the reasonable interference of other Contractor employed by NCTD which do not necessarily prevent the completion of the whole work within the Agreement term.

Unavoidable Delays: Unavoidable delays in the prosecution or completion of the Work shall include all delays which result from causes beyond the control of the Contractor and which could not have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or his Subcontractors. Delays due to normal weather conditions shall not be regarded as unavoidable as the Contractor agrees to plan his work with prudent allowances for interference by normal weather conditions. Delays caused by acts of God, fire, unusual storms, floods, tidal waves, earthquakes, strikes, labor disputes, freight embargoes and shortages of materials shall be considered unavoidable delays.

Extension of Time Due to Weather Delays: The construction schedule shall be based upon the inclusion of ten (10) days of inclement weather delays. An inclement weather delay is defined as a delay caused by inclement weather which prevents the Contractor from working on the controlling item in the Contractor's construction schedule (i.e. Current critical path item). Should the Contractor experience weather delays over the course of the contract duration in excess of ten (10) days, the Contractor shall be granted a time extension for an equal number of days, pursuant to the provisions outlined herein under unavoidable delays.

Notice of Delays: Whenever the Contractor foresees any delay in the prosecution of the Work and in any event, immediately upon the occurrence of any delay which the Contractor regards as unavoidable, he/she shall notify the Contract Officer in writing of the probability of the occurrence of such delay and its

cause. The Contractor shall take immediate steps to prevent, if possible, the occurrence or continuance of the delay. The Contractor agrees that no claim shall be made for delays which are not called to the attention of the NCTD's Representative at the time of their occurrence.

B. EXTENSION OF TIME

The Agreement term shall only be changed by a change order. Any request by the Contractor for an extension of the time schedules shall be based on a written notice to the Contract Officer within seven (7) calendar days after the occurrence of the event giving rise to the request, and stating the general nature of the request. Notice of the extent of the request with supporting data shall be delivered within fourteen (14) calendar days after such occurrence, and shall be accompanied by the Contractor's written statement that the adjustment requested is the entire time adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. An increase in time does not mean that the Contractor is entitled to an increase in contract price.

An extension in time will not be granted unless the Contractor can demonstrate through an analysis of the CPM progress schedule critical path that the increases in time to perform or complete the Work in question, or specified part of the work, beyond the corresponding contract time(s) arise from unforeseeable causes beyond the control of the Contractor and its subcontractors, suppliers or other persons or organizations, and that such causes in fact lead to performance or completion of the Work, or specified part in question, beyond the corresponding contract time, despite the Contractor's reasonable and diligent actions to guard against those effects.

Avoidable Delays: In case the Work is not completed in the time specified, including extension of time as may have been granted for unavoidable delays, the Contractor will be assessed liquidated damages for those costs incurred by NCTD that are attributable to the fact that the Work was not completed on schedule. NCTD may grant an extension of time for avoidable delay if he deems it in his best interest. If NCTD grants an extension of time for avoidable delay, the Contractor agrees to pay all charges for engineering inspection and administration during the extension. In this event, NCTD agrees that it will not assess damages to the Contractor.

Unavoidable Delays: For delays which the Contractor considers to be unavoidable, it shall submit to the Contract Officer complete information demonstrating the effect of the delay on the critical path of the CPM construction schedule, pursuant to the method described above. During such extension of time, neither compensation or engineering inspection and administration nor damages for delay will be charged to the Contractor. It is understood and agreed by the Contractor and NCTD that time extensions due to unavoidable delays will be granted only if such unavoidable delay involve critical path activities which would prevent completion of the whole Work within the specified contract time.

C. PROGRESS MEETINGS

The Contractor shall schedule and hold regular on-site progress meetings at least weekly, and at other times as required by the Work. The Contractor and NCTD shall attend. The Contractor may also bring representatives of its suppliers, manufacturers, and subcontractors.

The Contractor shall preside at the meetings and will arrange for keeping and distributing the minutes. The purpose of the meeting will be to review the progress of the Work, maintain coordination efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Contractor is required to present any issues which may impact the Work with a view to resolve these issues expeditiously.

D. PROGRESS SCHEDULE

The Contractor shall adhere to the progress schedule established in accordance with the following requirements, as it may be adjusted from time to time as provided below:

Non-Impacting Adjustments: Contractor shall submit to NCTD for acceptance proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

Revisions to Contract Times (or Milestones): Proposed revisions in the progress schedule that will change the Contract Times (or Milestones) shall be submitted to NCTD for approval. Such adjustments may only be made by a Change Order in accordance with the General Conditions.

Recovery Schedule: The Contractor shall submit an Impact Analysis and Recovery Schedule to address any schedule impacting events. Failure to make this Impact Analysis and Recovery Schedule available within fourteen (14) days of the occurrence of the impacting event will be considered a concurrent delay event attributable to the Contractor, and the Contractor will only be entitled to non-compensable time. If the Contractor is responsible for the delay, this provision will not limit or affect their liability.

Requirements Overview: The Contractor's planning, scheduling and execution of the contract work shall be presented to NCTD by submission of the progress schedule information and data specified in this Section.

The Work under this Agreement will be planned, scheduled, executed, and reported by the Contractor using a cost-loaded CPM schedule within a Work Breakdown Structure specified by NCTD. The Contractor will adhere to established technical standards for CPM scheduling using a computerized precedence diagram method. The Contractor is required to provide baseline and status data using a hard copy and disk format specified by NCTD.

All schedules shall be in accordance with the requirements of the Contract. NCTD's review or acceptance of any schedule shall not relieve the Contractor from responsibility for complying with the Contract requirements, adhering to those sequences of work indicated in or required by the Agreement Documents, or from completing any work omitted from the schedule within the Contract Time.

E. USE OF FLOAT

Total Float is the number of days by which a part of the Work in the Construction Schedule may be delayed from its early dates without necessarily extending the term of the Agreement ("Contract Time"). Contract Float is the number of days between the Contractor's anticipated date for early completion of the Work, or specified part, and the corresponding Contract Time. Total Float and Contract Float belong to the project and are not for the exclusive benefit of any party. They shall be available to NCTD, its consultants, or the Contractor, to accommodate changes in the Work, or to mitigate the effect of events that may delay performance or completion. NCTD will monitor and optimize the use of float for the benefit of the project.

F. EARLY COMPLETION

An early completion schedule is one which anticipates completion of all or specified part of the Work ahead of the corresponding Contract Time. Since Contract Float belongs to the project, the Contractor shall not be entitled to any extension in Contract Time, or recovery for any delay incurred because of extensions in an early completion date, until all Contract Float is used or consumed and performance or completion of the Work extends beyond the corresponding Contract Time.

G. FLOAT SUPPRESSION

Float suppression techniques are prohibited. The Contractor shall remove any float suppression techniques, e.g., preferential sequencing (crew movements, equipment use, for reuse, etc.), extended durations, imposed dates, scheduling of non-critical work, artificial logic.

H. CONTRACT SCHEDULES - GENERAL CRITERIA

Contract schedules include the Contractor's Mobilization Schedule, all versions of the Contractor's Construction Schedule including baselines, monthly updated schedules, revised schedules, and recovery schedules, and weekly rolling schedules. All Contract Schedules are prepared by the Contractor and reflect the Contractor's plans for and status of the Work. The Contractor shall provide seven (7) copies of all Contract Schedules, except for weekly rolling schedules of which the Contractor shall provide enough copies for distribution at weekly Progress and Coordination meetings.

The Contract Schedules shall show the breakdown of work into activities and relationships only to the extent required to effectively manage the work. The Contract Schedules shall show the division of the

Work into activities and specify the progression from the Notice to Proceed to the completion of the Work. Each construction activity shown on the Contract Schedules will have a respective budget value, a portion of the Contract Price. The Contract Schedule shall include appropriate time allowances for submittals, items of interface with work performed by others, and specified Construction, unless authorized by NCTD, a site-related activity shall span work ten (10) work days or less, and have a value not exceeding ten thousand dollars (\$10,000). All activity durations shall be in work days.

The Contractor's Construction Schedule shall include all procurement related activities which lead to the delivery of permanent materials to the site. Procurement activities include but may not be limited to preparation of shop drawings, review and acceptance of shop drawings, materials fabrication, and materials delivery. Upon written approval by NCTD, these activities may be displayed or reported as a separate Off-Site Activities Schedule, properly correlated to the Contractor's Construction Schedule.

The Contractor shall schedule those requisite duties and responsibilities of NCTD. The Contract Schedules shall incorporate appropriate activities and sequences based on the information given in the Agreement Documents, and if not given, as indicated by NCTD in writing.

The Contractor shall prepare a Schedule of Values which lists all Contract activities and their respective budget values that were developed in the cost loading process. The budgets shown in the Schedule of Values will be the basis for determining the values earned as the Work is accomplished, e.g., physical percent complete times the activity budget.

The Contractor's Construction Schedule shall consist of a tabular logic report sorted by Activity ID including activity description, total duration, early start and finish dates, late start and finish dates, free float, total float, percent complete, remaining duration and detailed predecessor and successor information for each activity, including any lag.

A time scaled Critical Path Method plot on D-size paper sorted by area, total float, early start and early finish. The plot must clearly and legibly show all activities and logical ties and shall display each activities title, original duration, remaining duration and total float value. The plot must also show the critical path for completion of the Work.

When the Contractor's Construction Schedule is reviewed and accepted it becomes the baseline Contractor's Construction Schedule. From then on, all activities and their relationships may not be changed, added, or deleted without the consent of NCTD.

I. SCHEDULE UPDATE - REQUIREMENT

Updating the Contractor's Construction Schedule and scheduling of changes and other events affecting the schedule is the responsibility of the Contractor. Contract Time (including all contracted milestones) shall not be changed without a formal Change Order approved by NCTD.

The Contractor shall update the Contractor's Construction Schedule each month. Updating the schedule shall consist of the following:

Updating Activity Status: Each month the Contractor shall enter percent complete, remaining duration, actual start, and actual completion dates into the schedule and recalculate the schedule based on the payment cutoff date for that month. Percent complete shall be the percent agreed to by NCTD at the monthly schedule meeting. Remaining duration shall be the Contractor's best estimate of the time required to complete activities which have started but not yet complete. Percent complete and remaining duration shall be arrived at independently for each activity. The remaining duration shall not be automatically calculated by the scheduling software based on the percent complete. The retained logic method of schedule calculation shall be used to calculate the schedule unless otherwise approved by NCTD.

J. WEEKLY ROLLING SCHEDULE

Weekly the Contractor shall submit a bar chart schedule which shows at a level of detail satisfactory to NCTD the Work planned and accomplished during that week, and the Work planned for the next three weeks. The look behind portion shall serve to document when activities from the previous week actually took place.

Next to each activity on the Weekly Rolling Schedule the Contractor shall list the activity number from the Contractor's Construction Schedule to which the activity on the rolling schedule corresponds.

The Contractor shall bring copies of the rolling schedule to each Progress and Coordination meeting in sufficient quantities for all attendees.

The Schedule Narrative accompanying the initial submittal of the Contractor's Construction Schedule shall describe the general sequence of the work, the critical path, any long lead equipment, any physical constraints to completing the Work and any assumptions made in developing the schedule.

The Schedule Narrative accompanying each update to the Contractor's Construction Schedule and shall, at a minimum, address the following:

1. Milestones Completed
2. A descriptive summary of each revision incorporated into the schedule since the last update and its effect on the schedule.
3. Any change to the critical path.
4. Any actual or anticipated problems with delivery of materials or equipment.
5. Any problems with submittal approval.
6. Any corrective action undertaken by the Contractor to address schedule problems.
7. Anything impacting critical path, milestones and contractual completion.

K. SUBMISSION AND NCTD APPROVAL OF CONTRACTOR'S CONSTRUCTION SCHEDULE

The Contractor shall submit the Contractor's Construction Schedule within fourteen (14) calendar days after the date of the Notice to Proceed. This schedule shall reflect the entire scope of the Contract Work as awarded.

The Contractor's Construction Schedule shall bear the Contractor's stamp of approval signed by the Contractor. The Contractor's stamp of approval shall constitute a representation to NCTD that the Contractor verified all data in the Contractor's Construction Schedule and assumes full responsibility for doing so, and that the Contractor has reviewed and coordinated all activities and logic in the Contractor's Construction Schedule with the requirements of the Work.

NCTD will review and return written comments on the Contractor's Construction Schedule to the Contractor within thirty (30) calendar days.

If revisions are required, the Contractor shall make appropriate adjustments or corrections and shall deliver to NCTD the revised Contractor's Construction Schedule directing specific attention, in writing, to adjustments or corrections made other than those made in response to NCTD's comments on the previous submittal. NCTD will review and return written comments on of the revised Contractor's Construction Schedule within fifteen (15) calendar days. This step shall be repeated until the schedule is accepted. Acceptance of the Contractor's Construction Schedule by NCTD shall be a CONDITION PRECEDENT to processing any Application for Payment, after the first full month.

NCTD's review and comments will be for conformance with the Contract Time and those sequences of work indicated in or required by the Agreement Documents, to record dates for milestones, and for conformance with the requirements of this Section and other information given in the Agreement Documents which may have a bearing on the schedule. NCTD's review will also be for reasonableness and consistency in the cost loading of the schedule activities. NCTD's review shall not extend to the Contractor's means, methods, or techniques, the correctness of which shall remain the sole responsibility of the Contractor.

Once the Contractor's Construction Schedule is accepted by NCTD it becomes the baseline Contractor's Construction Schedule for the Work, and is the basis for (a) the monitoring of the Contractor's progress against milestones and Contract Time, and (b) the evaluation and reconciliation of extensions in Contract Time.

L. MONTHLY UPDATE OF THE CONTRACTOR'S CONSTRUCTION SCHEDULE

The cutoff date for the payment application and schedule update shall be determined by NCTD.

M. SCHEDULE STATUS SUBMITTALS

An update of the Contractor's Construction Schedule is due monthly, with (attached to) each Application for Payment. Receipt by NCTD of the update of the Contractor's Construction Schedule will be a CONDITION PRECEDENT to processing each Application for Payment.

Neither the updating of the Contractor's Construction Schedule nor the updating of any report or schedule submitted to NCTD by the Contractor under this Section shall have the effect of amending or modifying, in any way, the Contract Time, Contract Completion Date, or Contract Milestone Dates.

N. MONTHLY REVIEWS

Monthly review meetings between NCTD and the Contractor will be held within seven (7) calendar days prior to the payment cutoff date. The purpose of this meeting is to finalize the percent to be paid for activities completed or in progress, and to review and discuss any required corrections and proposed revisions to the schedule.

Prior to the monthly review meeting, the Contractor will update the status of each activity in progress or completed with actual or estimated actual start and finish dates, physical percent complete and remaining duration for activities started but not completed and calculate the CPM Network through payment cutoff date. The Contractor shall provide an electronic copy of the updated schedule to NCTD three (3) workdays prior to the schedule review meeting. Contractor will provide appropriate reports as defined by NCTD at the monthly review meeting.

After the meeting, the Contractor shall make revisions to the status of activities as directed by NCTD and submit the payment application along with the final update of the Contractor's Construction Schedule within seven (7) calendar days.

O. SCHEDULE REVISIONS

The Contractor's Construction Schedule must be revised when it is no longer useful as a status and control mechanism as determined by NCTD or when a change or delay impacts the Contractor's timing and sequence of the Work. Contract Time (including all contracted milestones) cannot be changed without a formal Change Order approved by NCTD.

All schedule revisions must be presented at the monthly review meeting for NCTD's coordination and acceptance. The Contractor shall provide a separate sub-network schedule for each proposed revision showing the revised activities and how he proposes to tie them into the Contractor's Construction Schedule.

P. SCHEDULE RECOVERY

Within five (5) days after a schedule problem is recognized and documented, the Contractor shall submit to NCTD a recovery schedule which shall consist of proposed revisions to the Contractor's Construction Schedule demonstrating how the Contractor intends to achieve all contractual milestones including contract completion within the allotted contract time. The accompanying narrative should describe the cause of the problems and the actions planned by the Contractor to recover the schedule. The Contractor shall promptly undertake appropriate action at no additional cost to NCTD to recover the schedule whenever the current schedule shows that the Contractor did not or will not achieve a milestone established in the Contractor's Construction Schedule.

Appropriate recovery actions may include, but not be limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence.

Lack of Action: The Contractor's refusal, failure or neglect to take appropriate recovery action or to submit a recovery schedule shall constitute reasonable evidence that the Contractor is not prosecuting the Work, or separable part, with the diligence that will ensure its completion within the applicable Contract Time.

Such lack of action shall constitute sufficient basis for NCTD to recommend the withholding of some or all of any payment due, and shall be considered grounds for termination by NCTD.

Q. RELIANCE ON SCHEDULE

Should any activity fail to be completed within fifteen (15) days after indicated schedule date, expedite completion of activity by whatever means NCTD deems appropriate and necessary without additional compensation.

Should any activity be thirty (30) or more days behind schedule, NCTD shall have right to perform activity or have activity performed by whatever method NCTD may deem appropriate. Costs incurred by NCTD in activity shall be deducted from Contract Price.

Failure by NCTD to exercise option to expedite activity shall not be construed as precedent for other activities, or as waiver of NCTD's rights to exercise NCTD's rights on subsequent occasions.

NCTD will rely on Contractor's CPM schedule to provide NCTD furnished labor, material or equipment, and/or coordinate work with other agencies and utilities, and/or provide responses to request for information so as not to delay activities on the critical path.

Nothing in these requirements shall be deemed to be usurpation of Contractor's authority and responsibility to plan and schedule work as required, subject to requirements of Agreement Documents.

ARTICLE 9 – CLAIMS, DISPUTES, AND INTERRUPTION OF WORK

A. NOTICE, SUBMITTAL AND RESOLUTION OF EXTRAS AND CLAIMS

Notice Requirement. If the Contractor believes that any instruction, clarification, RFI response, directive, conflict, request, drawing, specification, error, omission, action, condition, default or other situation obligates NCTD to pay additional compensation to the Contractor or to grant an extension of time for the completion of the Project, or constitutes a waiver of any provision in the Agreement Documents, Contractor shall notify NCTD, in writing, of such belief within seven (7) calendar days from the date Contractor has actual or constructive notice of the factual basis supporting the claim, or from the beginning of events arising to the contention. The Contractor acknowledges that failure to notify NCTD within the prescribed period would irreparably prejudice NCTD's rights to promptly address the matter, and such failure shall be deemed a waiver and relinquishment of any related claim against NCTD. If such notice is given within the specified time, the procedure for its consideration shall be as stated in the Agreement Documents.

General Content Requirements for Claims and Requests for Contract Adjustments. Construction related claims or requests or bids for Contract adjustment shall be in writing and shall include all analyses, narratives, schedules, photos, graphics and back-up documentation necessary to fully substantiate the entitlement, causation, and amount of the claim. Submittals shall include a discrete sequential number for tracking purposes. Claims/requests must include a detailed discussion of contractual entitlement, including citations of specific Contract or Contract Document clauses, drawing notes, specification sections, code sections, etc., setting forth the contractual provisions upon which the Contractor relies in seeking additional compensation or time. The claim/request must also establish causation, i.e., the link between the claimed event(s) and the claimed costs and/or time. Claims/requests for adjustments related to a delay or extension of time for any cause would require a CPM schedule analysis and an analysis of potential mitigation measures and costs submitted in accordance with the provisions of these Agreement Documents and the Specifications. All claimed costs must also be properly calculated and fully documented, including back-up of all actual costs expended from Contractor job cost accounting system, and an identification of any claimed costs which may be estimated costs. All of the above requirements are also applicable to any claims/requests made by Subcontractors or suppliers and passed through by the Contractor.

In addition to the above, the Contractor shall submit with each claim or request, an notarized affidavit certifying under penalty of perjury that a) The claim/request is made in good faith and is an accurate

representation of all costs and delays associated with the claimed event; b) the Contractor has reviewed all data assembled to support the claim/request and certifies that the claim/request is legitimate and the costs were truly incurred and have been accurately entered on the Project's job cost records; c) a claim/request for an extension of Contract time has been based on a detailed CPM Schedule Analysis; and d) the claim/request complies in all aspects with the Program Fraud and False or Fraudulent Statements or Related Acts clause of this IFB as well as the California False Claims Act (Government Code section 12650-12656). The affidavit shall be executed by an officer, director or general partner of the Contractor. For purposes of the affidavit, the Contractor certification also includes and certifies claims submitted by Subcontractors or suppliers and passed through to NCTD by Contractor.

Deadline for Submitting Claims. Claims must be filed in full accordance with the Agreement Documents requirements and before the date of final payment. Nothing in this Article is intended to extend the time limit or supersede any other notice requirements otherwise provided by contract for the submittal of claims or requests or proposals for Change Orders. Notwithstanding anything set forth herein, Contractor is alerted to the fact that the Federal Transit Administration review and concurrence may be required for change orders or claim settlements 1) that exceed one hundred thousand dollars (\$100,000.00); 2) for claims for which insufficient funds remain in the approved Federal grant to cover the settlement; or 3) or where a special Federal interest is declared as delineated in FTA Circular 5010.1D.

NCTD Response to Claims

1. For claims of less than fifty thousand dollars (\$50,000). NCTD shall respond in writing to any written claim within forty-five (45) days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims NCTD may have. If further additional information is thereafter required, it shall be requested and provided pursuant to this Article, upon mutual agreement of NCTD and the Contractor. NCTD's written response to the claim shall be submitted to the Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater. If the claim is found to have merit, settlement of the claim will be made pursuant to the Changes provisions of the Agreement Documents. If the claim is not found to have merit, settlement of the claim will be made pursuant to the applicable provisions of this Article.
2. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000). NCTD shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims NCTD may have. If further additional information is thereafter required, it shall be requested and provided pursuant to this Article, upon mutual agreement of NCTD and the Contractor. NCTD's written response to the claim, as further documented, shall be submitted to the Contractor within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater. If the claim is found to have merit, settlement of the claim will be made pursuant to the Changes provisions of the Agreement Documents. If the claim is not found to have merit, settlement of the claim will be made pursuant to the applicable provisions of this Article.
3. For claims in excess of three hundred thousand dollars (\$375,000.00). NCTD shall respond in writing to all written within seventy-five (75) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims NCTD may have. If further additional information is thereafter required, it shall be requested and provided pursuant to this Article, upon mutual agreement of NCTD and the Contractor. NCTD's written response to the claim, as further documented, shall be submitted to the Contractor within thirty (30) days after the receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional

information or requested documentation, whichever is greater. If the claim is found to have merit, settlement of the claim will be made pursuant to the Changes provisions of the Agreement Documents. If the claim is not found to have merit, settlement of the claim will be made pursuant to the applicable provisions of this Article.

Informal Meet and Confer Conference. For all claims subject to this Article, if the Contractor disputes NCTD's written response, or NCTD fails to respond within the time prescribed, the Contractor may so notify NCTD in writing, either within fifteen (15) days of receipt of NCTD's response or within fifteen (15) days of NCTD's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, NCTD shall schedule, and shall endeavor to hold, a meet and confer conference within 30 days for settlement of the dispute.

Procedures for Civil Actions to Resolve Disputed Claims.

1. Procedures for Civil Actions to Resolve Disputed Claims less than or equal to three hundred seventy five thousand dollars (\$375,000.00)
 - a. Non-Binding Mediation. All claims equal to or less than three hundred seventy-five dollars (\$375,000.00) unresolved by the informal conference described above shall be resolved in a court of proper jurisdiction as follows: within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleading, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless that time requirement is extended by a good cause showing to the court. If the parties fail to select a mediator within the fifteen (15)-day period, any party may petition the court to appoint the mediator.
 - b. Judicial Arbitration. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and if possible with light rail systems design and construction, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.
 - c. Any arbitration, mediation or other forms of alternative dispute resolution initiated by the parties under these Agreement Documents shall be handled within the boundaries of NCTD unless otherwise mutually agreed.
2. Procedures for Civil Actions to Resolve Disputed Claims over Three Hundred Seventy-five Thousand Dollars (\$375,000.00).
 - a. Procedures for Claims over Three Hundred Seventy-five Thousand Dollars (\$375,000.00. If a dispute in excess of a total value of \$375,000.00, arises out of or relates to this Agreement, or the breach thereof, and if said dispute is unresolved by the informal conference as described above, and cannot be settled through normal contract negotiations, the parties agree that as a condition precedent to the initiation of litigation, the dispute shall first be submitted to mediation pursuant to this Article.
 - i. Mediation. The mediation is non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable resolution of the dispute.

- (1) Either party may initiate mediation by notifying the other party or parties in writing. A Request for Mediation shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those, if any, who will represent them in the mediation.
- (2) The mediation process set forth in this Article shall be administered by the American Arbitration Association (AAA) and governed by their Construction Arbitration rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator").
- (3) The costs for all mediation, including the administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.
- (4) A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction matters, and, if possible, with light rail systems design and construction issues, and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.
- (5) At least ten (10) days before the first scheduled mediation session, each party shall provide the mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. Such memoranda shall be mutually exchanged by the parties. At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented. The mediator may require each party to supplement such information.
- (6) Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed to by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as they relate to either party's legal position. There shall be no stenographic record of the mediation.
- (7) Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator. The parties may have an attorney present and shall advise the other parties no less than five (5) working days before the mediation of their intent to have an attorney present, so that the other parties may also have their attorneys present.
- (8) The mediator does not have authority to impose a settlement on the parties but will attempt to assist the parties in reaching a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.
- (9) The mediator is authorized to end the mediation whenever, in the mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the parties.
- (10) Any resultant agreements from mediation shall be documented in writing, as agreed upon during the mediation, and may be used as the basis for a change order or other directive as appropriate. All oral and written statements, presentations, results, testimony and documentation shall be non-binding and inadmissible for any purpose

in any legal proceedings, unless such admission is otherwise agreed in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery in subsequent proceedings.

- (11) The mediation shall be terminated by the execution of a Settlement Agreement by the parties; by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

Rights and Remedies. The duties and obligations imposed by an awarded Contract and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the Contract and amendments thereto and all of the rights and remedies available to the NCTD hereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Agreement Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Agreement Documents in connection with each particular duty, obligation, right and remedy to which they apply.

4. NCTD shall not fail to pay money as to any portion of a claim that is undisputed except as otherwise provided in the contract.
5. NCTD shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

B. CONTINUING THE WORK DURING DISPUTES

The Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with NCTD over any Work scope, price, or time dispute. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Contractor and NCTD may otherwise agree in writing.

C. SUSPENSION FOR CAUSE OR CONVENIENCE

NCTD may, without cause, order the Contractor in writing to suspend, or interrupt performance of the Work in whole or in part for such period of time as NCTD may determine. An adjustment may be made for an increase in the cost of performance of the Contract including profit on the increased cost of performance, if any, caused by any such suspension or interruption. An equitable adjustment may be made of the price or prices specified in the Contract relating to the portion of the Work not suspended or interrupted by the notice of suspension or interruption. No adjustment shall be made to the extent:

1. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. An equitable adjustment is made or denied under another provision of this Agreement.

D. EFFECT OF SUSPENSION, OR INTERRUPTION FOR CAUSE OR CONVENIENCE

Any suspension or interruption for cause or convenience shall be effected by delivery to the Contractor of a written notice of suspension or interruption specifying the extent to which performance of Work under the Contract is suspended or interrupted and the date upon which such suspension or interruption becomes effective. After receipt of the notice of suspension or interruption and except as otherwise directed by NCTD, the Contractor shall:

- a. Stop Work under the Contract on the date and to the extent specified in the notice of suspension or interruption;
- b. Place no further orders or subcontracts for materials, services or facilities except as necessary to complete the portion of the Work under the Contract which is not suspended or interrupted;

- c. Place no further equipment at the Project except as necessary to complete the portion of the Work under the Contract which is not suspended or interrupted;
- d. Terminate all orders or subcontracts to the extent they relate to the performance of Work suspended or interrupted by the notice of suspension or interruption;
- e. Assign to NCTD in the manner, at the times, and to the extent directed NCTD, all the right, title and interest of the Contractor under the orders and subcontracts so suspended or interrupted. NCTD shall have the right, in its discretion, to settle or pay any or all claims arising out of the suspension or interruption of such orders and subcontracts;
- f. Settle all outstanding liabilities and all claims arising out of such suspension or interruption of orders and subcontracts, with the approval or ratification of the Board to the extent the Board may so require. The Board's approval or ratification shall be final for all purposes of this clause;
- g. Transfer title to NCTD, and deliver in the manner, at the times, and to the extent, if directed by NCTD, the fabricated or unfabricated parts, work in process, completed Work, supplies and other materials produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of suspension, or, and the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to NCTD;
- h. Use its best efforts to sell, in the manner, at the times, and to the extent, and at the price or prices that NCTD direct or authorized, any property of the types previously referred to herein, but the Contractor shall not be required to extend credit to any purchaser and may acquire any such property under the conditions prescribed and at a price or prices approved by NCTD. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the NCTD to the Contractor under this Agreement or shall otherwise be credited to the price or cost of the Work covered by this Agreement or paid in such other manner as NCTD may direct;
- i. Complete performance of such part of the Work as shall not have been suspended or interrupted by the notice of suspension or interruption;
- j. Take such action as may be necessary, or as NCTD may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Contractor and in which NCTD has or may acquire an interest;
- k. The Contractor shall maintain the Work site and provide such ingress and egress for local resident or tenants or the public as may be necessary during the period of suspended work or until the Contract has been declared terminated; and
- l. Maintain all required insurance as if the Contract had been satisfactorily performed and accepted by NCTD.

After receipt of the notice of suspension, or interruption, the Contractor shall submit to NCTD a certified suspension or interruption claim. Such claim shall be submitted promptly but in no event later than ninety (90) days from the effective date of the notice of suspension or interruption. If the Contractor fails to submit a suspension or interruption claim at any time after such ninety (90) day period, NCTD may determine, on the basis of information available to it, the amount, if any, due to the Contractor. NCTD shall then pay to the Contractor the amount so determined.

After receipt of a certified claim, NCTD and the Contractor may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial suspension or interruption of the Contract. The amount may include a reasonable allowance for profit on Work performed. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not suspended, or interrupted and any claims NCTD may have against the Contractor. Nothing in this section, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

After receipt of a certified claim, if the Contractor and NCTD fail to agree on the amounts to be paid to the Contractor, NCTD shall determine, on the basis of the information available to it the amount, if any, due to the Contractor by reason of the suspension or interruption and shall pay the Contractor the amount which shall be determined as follows:

1. For all work specified in the Contract which is performed before the effective date of the notice of suspension or interruption, the total of:
 - i. The reasonable cost to the Contractor, without profit, for all Contract Work performed prior to the notice of suspension or interruption, including the Work done to secure the project for termination. In determining the reasonable cost, NCTD may utilize the schedule of values, Contract unit prices, Contract lump sum, the percentage of Work completed and any other method available to it. For purposes of determining reasonable costs, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the Work. When in the opinion of NCTD the cost of an item of Work is unreasonably high, the reasonable cost to be allowed will be the estimated reasonable cost of performing such Work in compliance with the requirements of the plans and specifications and excessive actual cost shall be disallowed.
 - ii. Reasonable cost will include a reasonable allowance for project overhead and general administrative overhead not to exceed a total of ten percent (10%) of direct costs of such Work.
 - iii. A reasonable allowance for profit on the cost of the Work performed as determined under Subsection (a), of this section, provided the Contractor established to the satisfaction of NCTD that it would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) of the cost of the Work completed.
 - iv. The reasonable cost to the Contractor of handling material returned to the vendor, delivered to NCTD or otherwise disposed of as directed by NCTD.

In no event shall NCTD be liable for costs incurred by the Contractor or any of its subcontractors after receipt of a notice of suspension, interruption or termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Contract post-suspension, post-interruption or post-termination, employee salaries, administrative expenses, overhead or unabsorbed overhead, the costs of preparing and submitting the bid, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized.

ARTICLE 10 - TERMINATION

A. TERMINATION FOR CAUSE

NCTD may, without prejudice to any other right or remedy, serve written notice upon Contractor and its Surety of its intention to terminate the awarded Contract if the Contractor (i) refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or (ii) fails to complete said Work within such time, or (iii) if the Contractor should file a bankruptcy petition or be adjudged a bankrupt, or (iv) if the Contractor should make a general assignment for the benefit of its creditors, or (v) if a receiver should be appointed on account of its insolvency, or (vi) if it should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the work in time specified, or (vii) if it should fail to make prompt payment to Subcontractors or for material or labor, or (viii) persistently disregard laws, ordinances or instructions of the NCTD or those of NCTD's Representatives, or (ix) otherwise be guilty of a substantial violation of any provision of the Contract, or (x) if it or its Subcontractors should violate any of the provisions of an awarded Contract.

The notice of intent to terminate shall contain the reasons for such intention to terminate. Unless within ten (10) calendar days after the service of such notice, such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, the awarded Contract shall, upon the expiration of said ten (10) calendar days, cease and terminate. In such case, Contractor shall

not be entitled to receive any further payment until Work is finished. In event of any such termination, NCTD shall immediately serve written notice thereof upon surety and Contractor written notice of termination stating that the contract has ceased and is terminated. Surety shall have the right to investigate, take over and perform this Agreement, provided, however, that if Surety, within fifteen (15) calendar days after service upon it of said notice of termination, does not give NCTD written notice of its intention to take over and perform this Agreement and does not commence performance thereof within twenty (20) calendar days from the date of service upon it of such notice of termination, NCTD may take over the Work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor. Contractor and its Surety shall be liable to NCTD for any excess cost or other damages occasioned NCTD thereby. If NCTD takes over the Work as hereinabove provided, NCTD may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the Work and necessary therefore. If Surety does not perform the Work itself, the Surety shall consult with NCTD regarding its planned choice of a Contractor or Contractor to complete the Project, and upon request by NCTD, Surety shall provide NCTD evidence of responsibility of Surety's proposed Contractor or Contractor. NCTD shall be entitled to reject Surety's choice of Contractor or Contractor if NCTD determines in its sole discretion that the Contractor or Contractor are non-responsible. If Surety provides NCTD written notice of its intention to take over and perform an awarded Contract, within fifteen (15) calendar days of such written notice of intent to take over and perform, Surety or its chosen Contractor or Contractor (if such Contractor or Contractor are approved by NCTD) shall provide NCTD a detailed Progress Schedule. The Contractor and its Surety shall be liable to NCTD for any excess cost or other damages occasioned NCTD as a result of Surety or Surety's Contractor or Contractor's takeover and performance.

If the unpaid balance of the awarded contract price exceeds the expense of finishing work, including compensation for additional architectural, managerial, and administrative services, such excess shall be paid to Contractor. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to NCTD. Expense incurred by NCTD as herein provided, and damage incurred through Contractor default, shall be certified by the appropriate NCTD Representative.

Should NCTD determine that environmental considerations mandate that the underlying project should not go forward, NCTD may notify Contractor that the awarded contract is terminated due to environmental considerations and NCTD shall only be obligated to pay Contractor for the Work that Contractor had performed at the time of notification of termination of the awarded Contract for environmental considerations.

B. TERMINATION FOR CONVENIENCE

NCTD may terminate performance of the Work called for by the Agreement Documents in whole or, from time to time, in part, if NCTD determines that a termination is in NCTD's interest. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience, the extent of termination, and the Effective Date of such termination. After receipt of Notice of Termination, and except as directed by NCTD, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

1. Stop Work as specified in the Notice.
2. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Agreement Documents.
3. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Agreement Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
4. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.
5. Place no further subcontracts or orders, except as necessary to complete the continued portion of the awarded Contract.

6. Submit to NCTD, within ten (10) calendar days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Agreement Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of NCTD's exercise of its right to terminate the awarded Contract pursuant to this clause, which costs the Contractor is authorized under the Agreement Documents to incur, shall: (i) be submitted to and received by NCTD no later than thirty (30) calendar days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by NCTD's Termination for Convenience."

Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed. In the event that NCTD exercises its right to terminate an awarded Contract pursuant to this provision, NCTD shall pay the Contractor, upon the Contractor submission of the documentation required by this clause and other applicable provisions of the Agreement Documents, all actual reimbursable costs incurred according to the provisions of the awarded Contract.

Termination of Contract by Contractor: The Contractor may terminate the awarded Contract upon ten (10) calendar days written notice to NCTD, whenever: (1) the entire Work has been suspended for ninety (90) consecutive days through no fault or negligence of the Contractor, and notice to resume the Work or to terminate the Contract has not been received from NCTD within this time period; or (2) NCTD should fail to pay the Contractor or any substantial sums due it in accordance with the terms of the Contract and within the time limits prescribed. In the event of such termination, the Contractor shall have no claims against NCTD except for Work performed as of the date of termination.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to NCTD.

Notwithstanding the foregoing provisions, the awarded Contract may not be terminated or modified where a trustee-in-bankruptcy has assumed the Contract pursuant to 11 U.S.C. section 365 (Federal Bankruptcy Act).

ARTICLE 11 - CORRESPONDENCE

NCTD's Contract Officer identified below is responsible for the business relationship with the Contractor and for contractual issues and changes. The Contract Officer is the only one authorized to receive from the Contractor or transmit to the Contractor, written correspondence regarding any questions, contractual clauses, items, disputes, requests, etc., relating to the contents of the Agreement, all of which are defined as "Official Correspondence."

Transmittal of Official Correspondence by either party may be email or the USPS. If desired, use of USPS may be by certified mail, return receipt requested, postage prepaid method.

NCTD	CONTRACTOR
North County Transit District 810 Mission Avenue Oceanside, CA 92054	
Attn: Suzie Tovar	Attn:
Email: stovar@nctd.org	Email:
Tel: 760-966-6606	Tel:

In the event issues arise that have not been satisfactorily addressed by the Project Managers of the Contractor and NCTD named in this Agreement and/or NCTD's Contract Officer named above in this Article, the issue is to be escalated to the persons listed below.

NCTD

Greg Wellong

CONTRACTOR

ARTICLE 12 - AMENDMENT

This Agreement shall only be amended, modified or changed in writing, executed by authorized representatives of the parties, with the same formality as this Agreement was executed. Any attempt to amend, modify, or change this Agreement by either an unauthorized representative or unauthorized means shall be void.

ARTICLE 13 – PROJECT MANAGEMENT

Contractor shall assign [INSERT] as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of NCTD.

NCTD shall assign Gagneet Singh as Project Manager and can be reached at 760-967-2850 and via email at gsingh@nctd.org to provide direction, coordinate procedures and manage all performance and technical issues of the Agreement.

ARTICLE 14 – DISADVANTAGED BUSINESS ENTERPRISE AND NONDISCRIMINATION

Contractor shall submit a document entitled “Final Utilization Report” (“the FUR”) within 90 days after the date all Work is completed. NCTD is required to track use of DBE and small business firms on procurements, whether or not federal funding is used.

NCTD requires all Contractor to comply with Title VI and Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and Housing Act, as amended, and all other applicable discrimination laws. NCTD will not tolerate illegal discrimination or harassment by Contractor.

NCTD, in accordance with the provisions of Title VI of the Civil Rights Act of 1964, 49 CFR Part 21, and 28 CFR section 50.3, hereby notifies Contractor that it will affirmatively ensure that DBEs will be afforded full and fair opportunity to work on NCTD projects and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

ARTICLE 15 - COMPLIANCE WITH LAW

A. GOVERNING LAW

The law of California shall govern the resolution of any issue arising in connection with the contract. The Contractor warrants that in the performance of a Contract it shall comply with all applicable Federal, State and Local laws and ordinances and all lawful orders, rules, and regulations thereunder.

The Contractor agrees that the venue for any legal proceeding relating to or concerning this Agreement is San Diego County, California.

B. COMPLIANCE WITH LAW IN GENERAL

Contractor shall comply with all applicable laws, ordinances, codes and regulations of the Federal, State and local governments relating to the performance of the Work, including any changes to such applicable laws, ordinances, codes and regulations of the Federal, State and local government during the performance of the Work. To the extent that the Federal requirements provided in herein do not directly apply to the Work, Contractor shall ensure that the Work, including but not limited to any and all work-product created under this Agreement, shall permit compliance with those requirements.

Contractor shall be aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, contractors, and subcontractors that are included in this Agreement.

By executing this Agreement Contractor certifies that it is (i) not owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.) or (2) not supplying any product for use on the Federal public works project that is produced or manufactured in a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the U.S.T.R. Countries currently listed on the Priority Watch List by the U.S.T.R. are: Argentina, Chile, China, India, Indonesia, Russia, Saudi Arabia, Ukraine, and Venezuela. This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001. Contractor and any of its subcontractors shall provide immediate written notice to NCTD if, at any time, it learns that its certification was erroneous by reason of changed circumstances.

Contractor shall not knowingly enter into any subcontract under this Agreement: (i) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; or (ii) for the supply of any product for use on the Federal public works project under this Agreement that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. Contractor may rely upon the certification in this section unless it has knowledge that the certification is erroneous. This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor or its subcontractor knowingly rendered an erroneous certification, in addition to other remedies available to NCTD, NCTD may cancel this Agreement at no cost. The definitions pertaining to this section are those that are set forth in 49 CFR 30.7-30.9.

Contractor will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations, the US Department of State's International Traffic in Arm Regulations, and other applicable export laws. Contractor will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of embargoed countries or denied entities or persons except in accordance with all then current applicable US government export laws and regulations.

Certification Clause Contractor agrees to insert the remainder of this subsection, without modification, including this paragraph, in all solicitations and subcontracts:

(1) Subcontractor, by submission of an offer and/or execution of a contract with a contractor, certifies that it is (i) not an owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.) or (2) not supplying any product for use on the Federal public works project that is produced or manufactured in a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the U.S.T.R.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(2) Subcontractor shall provide immediate written notice to the Contractor if, at any time, subcontractor learns that its certification was erroneous by reason of changed circumstances.

(3) A contractor shall not knowingly enter into any subcontract under this Agreement: (i) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; or (ii) for the supply of any product for use on the Federal public works project under this Agreement that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. The Contractor may rely upon the certification in paragraph (g)(1) of this clause unless it has knowledge that the certification is erroneous.

(4) Unless the restrictions of this clause have been waived under the Agreement for the Federal public works project, if a contractor knowingly enters into a subcontract with a subcontractor that is a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or that supplies any product for use on the Federal public works project under this Agreement that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., the Contract Officer may direct, through higher-tier contractors, cancellation of this Agreement at no cost to the government.

(5) Definitions. The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7-30.9.

(6) The certifications in this section are a material representation of fact upon which reliance was placed when making the award. If it is later determined that a subcontractor knowingly rendered an erroneous certification, in addition to other remedies available to the government, the government Contract Officer may direct, through higher-tier contractors, cancellation of this subcontract at no cost to the government.

C. SAFETY LAWS AND REGULATIONS

9. The Contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and of underground facilities and utilities when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

10. Safety Orders: The Contractor shall have at the Work site as applicable, copies of: Construction Safety Orders, Tunnel Safety Orders, and General Industry Safety Orders issued by the State Division of Industrial Safety. The Contractor shall comply with provisions of these and all other applicable laws, ordinances, and regulations.

Trench Shoring Plan: Before excavating any trench five (5) feet or more in depth, the Contractor shall comply with the provisions of the Hazardous Materials/Trenches/Excavations/Regional Notification section of this IFB.

D. HAZARDOUS MATERIALS/TRENCHES/EXCAVATIONS/REGIONAL NOTIFICATION

Compliance With All Applicable Laws: All work performed by the Contractor under an awarded contract shall at all times be in compliance with all applicable federal, state, and local laws, statutes, ordinances, orders, guidelines, rules, and regulations pertaining to the excavation, removal, containment, hauling, transportation, disposal, recycling, or handling in any manner of Hazardous Substances and/or Contaminated Materials. During the term of an awarded contract, the Contractor shall acquire and maintain all permits required for the removal, excavation, hauling, containment, transportation, disposal, recycling, or handling of Hazardous Substances and/or Contaminated Materials by any and all applicable federal, state, and local laws, statutes, ordinances, orders, guidelines, rules, and regulations.

1. The Contractor shall also comply with the following provisions related to excavations:

- a. Trenches Five (5) Feet or More in Depth. If the Contract Price exceeds twenty-five thousand dollars (\$25,000), the Contractor shall submit to NCTD, for acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL-OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.
 - b. All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
 - c. Nothing in this Article shall relieve the Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer. No excavation of such trench or trenches shall be commenced until said plan has been accepted by NCTD or the person to whom authority to accept has been delegated by NCTD.
 - d. Excavations Deeper than Four (4) Feet. If work under an awarded contract involves digging trenches or other excavation that extends deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify NCTD, in writing, of any:
 - i. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - ii. Subsurface or latent physical conditions at the site differing from those indicated.
 - iii. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the awarded contract.
 - iv. NCTD or NCTD's Representatives shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor cost of, or the time required for, performance of any part of the work, shall issue a change order under the procedures described in the contract.
 - v. In the event that a dispute arises between NCTD or NCTD's Representative and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.
2. Regional Notification. The Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) working days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by NCTD, and obtain an inquiry identification number from that notification center. No excavation shall

be commenced and carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any Subcontractor of the Contractor and NCTD or NCTD's Representatives has been given the identification number by the Contractor.

3. Emergency shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage (Government Code section 4216).
4. Subsurface installation means any underground pipeline, conduit, duct, wire, or other structure operated or maintained in or across a public street or public right of way (Government Code section 4216).

E. COMPLIANCE WITH STATE STORM WATER PERMIT (SSWP) FOR CONSTRUCTION

Contractor's Responsibility. If coverage under the Construction General Storm Water Permit, and/or if and to the extent storm water permitting, control mitigation or discharge control, is required by applicable laws, ordinances, rules and regulations, the Contractor shall (1) file and obtain a Waste Discharge Identification (WDID) number under the Construction General Storm Water Permit; (2) furnish all notices required under the Construction General Storm Water Permit; (3) prior to starting any work at the site perform a risk determination and prepare all "Permit Registration Documents," including amendment of a SWPPP; and (4) take all necessary steps to monitor, report, enforce and otherwise implement and comply with the requirements of the Construction General Storm Water Permit, NCTD Storm Water Management Plan and the SWPPP and all applicable ordinances, laws, rules and regulations relating to the Construction General Storm Water Permit and/or pertaining to the elimination or mitigation of storm water pollutant discharge to separate storm sewer systems or other watercourses, including without limitation, applicable requirements of NCTD, the SWRCB, SDRWQCB and any other municipal storm water management programs.

Copies of Reports. The Contractor shall provide copies of all reports and monitoring information to the NCTD Project Manager, as set forth further in this document.

Violations. The Contractor recognizes and understands that failure to comply with the requirements of the Construction General Storm Water Permit is a violation of federal and state law.

Condition of Payment. Compliance by the Contractor with the requirements of this document shall be a condition to the Contractor's right to payment and NCTD may withhold sufficient amounts as set forth further in herein or under the paragraph entitled "Retention".

Costs of Compliance. As set forth further herein, the Contractor represents and warrants that it has included in the Bid sum and contract amount all costs of compliance with the requirements of this document.

F.COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLAN (SWPPP)

At a minimum, the Contractor's SWPPP shall address the control measures as found in the Storm Water Program Handbook.

All work involved in developing, preparing, obtaining acceptance of, revising and amending the SWPPP and for furnishing all labor, materials, tools, equipment and incidentals, and for doing all work involved in installing, construction, maintaining, removing and disposing of control measures as specified in these special provisions shall be included in the Bid Price Form.

G. CALIFORNIA LABOR CODE REQUIREMENTS

In the event Federal Labor Code provisions apply to this Agreement, it is the responsibility of the

Contractor to ensure that it complies with both Federal and State labor laws, to the extent applicable. The Contractor shall defend, indemnify and hold NCTD harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Contractor or its Subcontractors to comply with the applicable Federal and/or State labor laws, to the extent applicable.

State Prevailing Wages. Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the governing body of NCTD has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute the Work. This includes workers who haul materials used for paving, grading and fill onto a public works site that is part of construction activity.

Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code Section 1773.1 apprenticeship or other training programs authorized by Labor Code Section 3093, and similar purposes when the term "per diem wages" is used herein.

Holiday and overtime work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per them wages, unless otherwise specified.

There shall be paid each worker of the Contractor or any of his Subcontractors engaged in work on the Project not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractors and such workers.

The Contractor shall, as a penalty to NCTD, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code Section 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or draft in which such worker is employed for any public work done under the contract by him or by any Subcontractor under him. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

Federal Prevailing Wage Rates are available at <http://www.wdol.gov/>; California State Prevailing Wages are available at http://www.dir.ca.gov/DLSR/statistics_research.html. Contractor shall post, at appropriate conspicuous points on the site of the Project, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

Any worker employed to perform work on the project that is not covered by any classification, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.

A certified copy of all payroll records shall be submitted to NCTD's Representative at Gafcon no later than the tenth (10th) day of each month for the immediately preceding month. This submission shall be a condition precedent for payment to the Contractor. Failure to submit payroll records shall be grounds for withholding of payment to Contractor until such submission is made.

H. RECORDS OF WAGES PAID

Pursuant to Labor Code Section 1776, Contractor stipulates to the following:

1. Each Contractor and Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the work under this Agreement. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms.
2. The payroll records enumerated above, shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
3. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employees or his or her authorized representative on request.

4. A certified copy of all payroll records enumerated above, shall be made available for inspection or furnished upon request to a the NCTD Project Representative, and the Division of Labor Standards Enforcement and Division of Apprenticeship Standards of the Department of Industrial Relations.
5. A certified copy of all payroll records enumerated in subdivision (i), above, shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through NCTD, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
6. Contractor shall file a certified copy of the records enumerated in subdivision (i), above, with the entity that requested such records within ten (10) days after receipt of the written request.
7. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, NCTD, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the contract or performing the contract shall not be marked or obliterated.
8. Contractor shall inform NCTD of the location of the records enumerated under subdivision (i), including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
9. In the event of noncompliance with the requirements of this section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of Twenty-five Dollars (\$25.00) to NCTD for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.
10. The responsibility for compliance with this section shall rest upon the Contractor.

I. APPRENTICES

Contractor and any Subcontractor under them shall comply with the requirement of Sections 1777.5 and 1777.6 of the Labor Code in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for each calendar day of non-compliance pursuant to Section 1777.7.

J. HOURS OF WORK

As provided in Article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Agreement upon the work or upon any part of the work contemplated by this Agreement is limited and restricted to eight (8) hours during any one-calendar day and forty (40) hours during any one-calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

The Contractor and every Subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work or any part of the work contemplated by this Agreement. The record shall be kept open at all reasonable hours to the inspection of NCTD and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

The Contractor shall pay to NCTD a penalty of twenty-five dollars (\$25) for each worker employed in the execution of this Agreement by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code.

Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to NCTD.

K. DEBARMENT OF CONTRACTOR AND SUBCONTRACTORS

Contractor or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between a Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid or may have been paid to a debarred subcontractor by a Contractor on the Project shall be returned to NCTD. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

L.ASSIGNMENT OF ANTI-TRUST ACTIONS

Pursuant to Section 7103.5 of the Public Contract Code, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to NCTD all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 USC, section 15) or under the Cartwright Act (chapter 2 (commencing with section 16700) of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Agreement or any subcontract. This assignment shall be made and become effective at the time NCTD tenders final payment to the Contractor, without further acknowledgment by the parties.

ARTICLE 16 – RECORDS AND AUDITS

A. RECORD RETENTION

The Contractor shall retain project records and make them available for inspection, copying, and auditing.

B. AUDIT AND RECORDS - SEALED BIDDING

- a) "Records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- b) Certified cost or pricing data. If the Contractor has been required to submit certified cost or pricing data in connection with the pricing of any modification to this Agreement, the Contract Officer, or an authorized representative of the Contract Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to:
 1. Records pertaining to bid preparation
 2. Overhead
 3. Payroll records and certified payroll
 4. Payments to suppliers and subcontractors

5. Cost accounting records
 6. Records of subcontractors and suppliers
 7. Final payment
 8. Resolution of claims, if any
- c) Maintain the records in an organized way in the original format, electronic and hard copy, conducive to professional review and audit.
 - d) Comptroller General. In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) and also the right to interview any current employee regarding such transactions.
 - e) Availability. The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b), for examination, audit, or reproduction, until 3 years after final payment under the contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, in effect on the date of the contract, is incorporated by reference in its entirety and made a part of the contract.
 - f) If the Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.
 - g) Records pertaining to appeals under the Disputes clause or litigation or the settlement of claims arising under or relating to the performance of the Agreement shall be made available until disposition of such appeals, litigation, or claims.
 - h) All the provisions of this section shall flow down to all third-party subcontractors and their subcontracts at every tier.

ARTICLE 17 - FEDERAL REQUIREMENTS

All contractual provisions required by the Department of Transportation, as set forth in FTA Circular 4220.1F, must be in all of the Contractor's subcontracts. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NCTD requests which would cause NCTD to be in violation of the FTA terms and conditions.

Inasmuch as the services herein described are to be purchased with Federal assistance authorized by the Department of Transportation and Federal Transit Administration (FTA) laws and regulations codified at 49 USC § 5301 et seq.; or the Infrastructure Investment and Jobs Act of 2021, Public Law No. 117-58, November 15, 2021; or Title 23, United States Code (Highways); or the Transportation Equity Act for the 21st Century, Pub. L. 105-178, June 9, 1998, 23 USC § 101 note, as amended by the TEA-21 Restoration Act, Pub. L., 105-206, July 22, 1998, 23 USC § 101 note, (TEA-21), Moving Ahead for Progress in the 21st Century Act (MAP 21), Pub. L. 112-141, July 6, 2012, and other further amendments thereto, Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94 , as may be amended, or other Federal enabling laws administered by FTA and guidance thereto, including without limitation FTA Circular 4220.1F and amendments thereto, and 2 CFR Part 200, the Contractor will be required to comply with all terms and conditions prescribed for third party contract in a grant contract between the United States Department of Transportation and NCTD and to flow all applicable federal provisions down to subcontractors at every tier. Federal provisions applicable to this Agreement and third party contracting in general and Federal Davis-Bacon Wage Requirements are provided in Exhibits hereto.

Specific guidelines shall be those prescribed by "Federal Transit Administration Master Agreement" (Form FTA-MA) 49 C.F.R., Part 18, Federal Transit Administration (FTA) Circular 4220.1 F, and 49 CFR Part 200. If a conflict between FTA Circular 4220.1F and 2 CFR Part 200 occurs, 2 CFR Part 200 controls and

supersedes.

ARTICLE 18 - INDEMNITY

Contractor shall, to the fullest extent permitted by law, hold harmless, protect, defend and indemnify NCTD and its Board of Directors and each member of the Board, officers, agents and employees, representatives and their successors and assigns ("NCTD " and/or " Indemnified Parties"), from and against any and all losses, liabilities, claims, suits, damages, expenses and costs including reasonable attorney's fees and costs, and expert costs and investigation expenses arising out of or attributable, in whole or in part, by to the performance or failure to perform by Contractor, its employees, representatives, subcontractors, or agents regardless of whether or not such claim, loss or liability is caused, in part by a party indemnified hereunder.

This indemnity is in addition to any other rights or remedies which NCTD may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, NCTD may, at its sole discretion, reserve, retain or apply any monies due to Contractor under this Agreement for the purpose of resolving such claims; provided however, that NCTD may release such funds if Contractor provides NCTD with reasonable assurances of protection of the NCTD's interest. NCTD shall, in its sole discretion determine whether such assurances are reasonable.

Contractor agrees that its duty to defend the Indemnified Parties arises upon an allegation of liability based upon the performance of services under this Agreement by Contractor, its officers, agents, representatives, employees, subcontractors, or anyone for whom Contractor is liable and that an adjudication of Contractor's liability is not a condition precedent to Contractor 's duty to defend. Contractor shall defend, at Successful Proposer's own cost, expense and risk, with counsel of NCTD's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Indemnified Parties. To the extent of its liability, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the Indemnified Parties, in any such suit, action or other legal proceeding. Contractor shall reimburse the Indemnified Parties for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Comprehensive Environmental Responses, Compensation, and Liability Act. Contractor acknowledges that the indemnifications contained herein are intended, in part, to operate as indemnifications under Section 9607(e)(1) of the Comprehensive Environmental Responses, Compensation, and Liability Act (42 USC Section 9601, et seq.) as may be hereinafter amended.

Confidential Materials. Access to government records is governed by the laws of the State of California under the California Public Records Act (Gov. Code 6250, et seq.) ("Act"). Solicitation forms submitted to NCTD are public records and may, therefore, be disclosed in accordance with the Act. Any such proprietary information, trade secrets or confidential commercial and financial information which a Contractor believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not ensure confidentiality. The Contractor shall submit proprietary information, trade secrets or confidential commercial and financial information, which a Contractor believes should be exempted from disclosure, in a separate volume specifically identified and marked as confidential. NCTD will release cost or price forms in response to a request pursuant to the Act so long as the Agreement for which the price forms were submitted has already been executed and the cost or price form does not contain trade secrets as defined by the Civil Code. Price forms submitted to NCTD are public records and may, therefore, be disclosed in accordance with the Act.

Public Records. Contractor agrees to indemnify and defend NCTD in the event NCTD withholds production of records which Contractor has marked "Confidential" "Trade Secret" "Proprietary", or similar designations, that are responsive to a Public Records Act request pursuant to California Government Code sections 6250. et. seq. or a Freedom of Information Act request.

Prevailing Wage. Contractor shall defend, indemnify, and hold NCTD, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws, if applicable.

ARTICLE 19 - LIQUIDATED DAMAGES

In the event that the Contractor fails to complete the specified Work within the specified days with the exception of extensions granted by Change Order, liquidated damages will be assessed for each day the completion of the specified Work is delayed. Since it is and will be extremely difficult to ascertain the actual damage NCTD will sustain in the event of and by reason of such delay, the Contractor agrees and shall pay to NCTD Eighty-Five Dollars (\$85.00) per day as liquidated damages (not as a penalty) for every additional day in excess of the number of days prescribed. NCTD may deduct the sum of liquidated damages from any monies due to or that may be due to the Contractor under the Contract, or if such monies are insufficient, the Contractor or sureties thereof shall pay NCTD any deficiency within thirty (30) calendar days.

ARTICLE 20 – SUBCONTRACTING

A. SUBCONTRACT LIMITATIONS

The Contractor shall perform not less than thirty-five percent (35%) of the Work with its own forces without subcontracting. This requirement refers to the Work whose value will not be less than thirty-five percent (35%) of the Contract Price.

B. TERMINATION OR SUBSTITUTION OF SUBCONTRACTOR(S)

No prime Contractor whose bid is accepted shall (a) substitute or terminate any Subcontractor, (b) permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original Subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work without prior written consent from NCTD. NCTD will evaluate all requests in strict accordance with NCTD's DBE Program, and all applicable laws rules and regulations including 49 CFR 26.53(f)(1)(i) the Subletting and Subcontracting Fair Practices Act (Chapter 2 [commencing at Section 4100], Division 5, Title 1 of the Public Contract Code of the State of California). Subletting or subcontracting of any portion of the Work in excess of one-half of one percent of the prime Contractor's total bid as to which no Subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the authority awarding this Agreement setting forth the facts constituting the emergency or necessity.

C. SUBCONTRACTING

Contractor agrees to bind every Subcontractor the terms of the Contract as far as such terms are applicable to Subcontractor's work. Contractor understands and agrees that it must ensure that each subcontract to any part of this Agreement expressly sets forth all applicable requirements and standards of FTA Circular 4220.1F as to third party contracting, and must ensure that its Subcontractors are aware of and comply with all Federal statutory and regulatory requirements that apply to its actions. Furthermore, all contractual provisions required by the Department of Transportation, as set forth in FTA Circular 4220.1F, must be in all of the prime contractor's subcontracts. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NCTD requests which would cause NCTD to be in violation of the FTA terms and conditions. If Contractor subcontracts any part of this Agreement, Contractor shall be as fully responsible to NCTD for the acts and omissions of its Subcontractor and of persons either directly or indirectly employed by his Subcontractor, as he is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Agreement Documents shall create any contractual relationship between any Subcontractor and the NCTD. NCTD shall be deemed to be the third party beneficiary of the contract between the Contractor and the Subcontractors. NCTD's consent to or the approval of any Subcontractor under this Agreement shall not in any way relieve Contractor of its obligations under this

Agreement and no such consent or approval shall be deemed to waive any provision of this Agreement. Substitution or addition of Subcontractors shall be permitted only as authorized in chapter 4 (commencing at section 4100), part 1, division 2 of the California Public Contract Code.

ARTICLE 21 - OWNERSHIP

A. OWNERSHIP OF DOCUMENTS

All tracings, plans, specifications, maps and/or reports prepared or obtained under the Agreement Documents shall be considered works made for hire and shall become property of NCTD without restriction or limitation on their use, and shall be made available upon request to NCTD at any time.

All documents and materials prepared or developed by the Contractor and its subcontractors pursuant to this Agreement shall become the property of NCTD without restriction or limitation on their use and shall be made available upon request to NCTD at any time. Original copies of such shall be delivered to NCTD upon completion of the services or termination of the services. The Contractor shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the written approval of NCTD.

No material or technical data prepared by the Contractor under this Agreement is to be released by the Contractor to any other person or agency except as necessary for the performance of the services. All press releases or information to be published in print or electronic media, shall be distributed only after first being authorized by NCTD.

NCTD shall have the right to use, duplicate, modify or disclose the technical data and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so.

The Contractor shall agree to grant to NCTD and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free license to publish, translate, reproduce, deliver, and use as they deem fit all technical data covered by copyright supplied for this Agreement. No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for NCTD to use in the manner herein described.

The Contractor warrants that the processes, design, equipment, materials, or devices used in providing the services shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against NCTD the Contractor shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by NCTD, and indemnify and hold harmless NCTD, its subsidiaries, agents and employees from all liability, damages, costs, and expenses associated therewith, including, without limitation, defense costs and attorney fees.

B. OWNERSHIP OF NCTD-PROVIDED OR PURCHASED MATERIALS, EQUIPMENT, DEVICES, ETC.

All NCTD-provided or purchased materials, equipment, devices, etc. obtained under the Agreement Documents shall be considered property of NCTD without restriction or limitation on their use and shall be made available upon request to NCTD at any time.

ARTICLE 22 – PERFORMANCE EVALUATION

In order to establish a written record of Contractor's performance, NCTD will conduct a review and evaluation of Contractor's performance, of which Contractor will receive a copy upon request. This review shall assist NCTD in determining the quality and level of performance required as well as to ensure Agreement compliance. NCTD reserves the right to use evaluations as a reference source in determining Contractor's responsibility for future procurements.

Contractor will be evaluated on the following: value of services, quality of technical performance, timeliness of performance, planning and implementation performance, quality of service, compliance, and business relations performance. If Contractor is found to be deficient in its evaluation it may be considered for removal and termination. Evaluations may be used as a reference on future procurements.

ARTICLE 23 – NATURE AND TREATMENT OF AGREEMENT DOCUMENTS

A. AGREEMENT DOCUMENTS/ INTERPRETATION OF CONTRACT

All rights and obligations of NCTD and the Contractor are fully set forth and described in the Agreement Documents. All parts of the Agreement Documents are intended to be correlated so that any work called for in one part and not mentioned in the other, and vice versa, is to be executed the same as if mentioned in all said documents. The individual documents comprising the Agreement Documents are complementary, and indicate the construction and completion of the Work. Anything mentioned in the Specifications and not shown on the Agreement Documents or shown on the Agreement Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. The intent of the Agreement Documents is to include all items necessary for the proper execution and completion of the Work.

B. SEVERABILITY OF CLAUSES

It is agreed that the illegality or invalidity of any term or clause of a Contract shall not affect the validity of the remainder of the Contract, and the Contract shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein.

C. SENSITIVE SECURITY INFORMATION - NOT APPLICABLE

D. RELATIONSHIP OF PARTIES

Nothing contained herein shall be construed as creating the relationship of employer and employee between NCTD and the Contractor or its agents and employees. The Contractor shall perform its services as an independent contractor in accordance with its own methods, this Agreement, applicable laws and regulations. The Contractor shall have exclusive and complete control over its employees and subcontractors.

E. SURVIVABILITY

The rights, obligations and conditions set forth in the sections of this Agreement concerning indemnification, limitations of liability, representations and warranties, insurance, limitations on use and disclosure, notices, disputes, records retention, ownership of intellectual property, work product or data, as well as any federal agency provisions, and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Agreement, shall survive until the last applicable statute of limitations expires.

F. ENTIRE CONTRACT

The Agreement Documents including exhibits thereto contain the entire agreement between the Parties with respect to the subject matter herein as of its date and supersedes all prior agreements, understandings and negotiations, whether oral or written, of the Parties with respect hereto.

G. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement or any part thereof including any claims, without prior written consent of NCTD. Any assignment without the written consent of NCTD shall be void. Any assignment of money due or to become due under this

Agreement shall be subject to a prior lien for services rendered or material supplied for performance of work called for under said contract in favor of all persons, Contractors, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure, and/or the Government Code.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement as of the last date of the Parties' signature.

NORTH COUNTY TRANSIT DISTRICT

CONTRACTOR NAME

By: _____
Greg Wellong
Procurement & Contract
Administration Manager

By: _____
Title
Printed Name

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY

CONTRACTOR NAME

By: _____
Lori A. Winfree
General Counsel

By: _____
Title
Printed Name

Date: _____

Date: _____

NOTE: If this Agreement involves a corporate party, the corporation must be represented by two individuals as follows: (A) one from the corporation's "Operational Group" (Chair of the Board, President, or a Vice-President) and; (B) one from the corporation's "Financial Group" (Secretary, Assistant Secretary, Chief Financial Officer, Treasurer or Assistant Treasurer). See California Corporations Code section 313.

FINAL UTILIZATION REPORT

Used to show utilization of DBEs at the conclusion of the Agreement, or if applicable, Task Order. All information on this form must be typed, excluding signatures. Required at closeout whether or not federal money used.

1. Local Agency: NCTD 2. Agreement or Task Order DBE Goal %: _____
 3. Project Description: _____
 4. Project Location: _____
 5. Contractor's Name: _____ 6. Prime is Certified DBE: ☐ 7. Total Award Amount: _____
 8. Total Dollar Amount Paid to ALL Subcontractors: _____ 9. Total Number of ALL Subcontractors: _____

10. Description of Work, Service, or Materials Supplied by DBE	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
NCTD to Complete this Section		14. TOTAL DOLLAR AMOUNT OF CLAIMED DBE PARTICIPATION	\$
20. NCTD Contract Number: _____		15. TOTAL PERCENT OF CLAIMED DBE PARTICIPATION ON AGREEMENT	%
21. Federal-Aid Project Number: _____		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
22. Contract Execution Date: _____			
NCTD reviewer has confirmed that all DBE certifications are valid and information on this form appears complete and accurate.		16. Preparer's Signature _____ 17. Date _____ 18. Preparer's Name _____ 19. Preparer's Title _____	
23. NCTD Representative's Signature _____ 24. Date _____			
25. NCTD Representative's Name _____ 26. Phone _____			
27. NCTD Representative's Title _____			

INSTRUCTIONS – FINAL UTILIZATION REPORT

CONTRACTOR SECTION

1. Local Agency – NCTD name entered as agency that is funding the Agreement or Task Order.
2. Agreement DBE Goal - Enter the Agreement or Task Order DBE goal percentage set by NCTD.
3. Project Description - Enter the project description.
4. Project Location - Enter the project location.
5. Contractor's Name - Enter the Contractor's firm name.
6. Prime Certified DBE - Check box if prime Contractor is a certified DBE.
7. Total Award Amount - Enter the total Agreement or Task Order award dollar amount for the prime Contractor.
8. Total Dollar Amount Paid to ALL Subcontractors – Enter the total dollar amount for all subcontracted Contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime Contractor information in this count.
9. Total number of ALL subcontractors – Enter the total number of all subcontracted Contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime Contractor information in this count.
10. Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime Contractor's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion furnished by the DBE.
11. DBE Certification Number - Enter the DBE's Certification Identification Number. All DBEs must be certified with the CUCP.
12. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted contractors. Also, enter the prime Contractor's name and phone number, if the prime is a DBE.
13. DBE Dollar Amount - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime Contractor if the prime is a DBE.
14. Total Claimed DBE Participation - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column: Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than the Contract/Task Order DBE Goal, additional documentation is required for the DBELO to determine if penalties apply.
15. Total Claimed DBE Participation - %: Enter the total DBE participation claimed. If the total % claimed is less than the Contract/Task Order DBE Goal, additional documentation is required for the DBELO to determine if penalties apply.
16. Preparer's Signature - The person completing the DBE Final Utilization Report on behalf of the Contractor's firm must sign their name.
17. Date - Enter the date the DBE form is signed by the Contractor's preparer.
18. Preparer's Name - Enter the name of the person preparing and signing the form.
19. Preparer's Title - Enter the position/title of the person signing the Contractor's Final Utilization Report.

NCTD SECTION

20. NCTD Agreement Number - Enter the NCTD Agreement and/or Task Order number.
21. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
22. Agreement Execution Date - Enter the date the Agreement was executed.
23. NCTD Representative's Signature - The person completing this section of the form for NCTD.
24. Date - Enter the date the DBE the form is signed by the NCTD Representative.
25. NCTD Representative's Name - Enter the name of the NCTD Representative reviewing the form.
26. Phone - Enter the area code and phone number of the person signing the form.
27. NCTD Representative Title - Enter the position/title of the NCTD Representative reviewing the Final Utilization Report.

SAMPLE PAYMENT REQUEST FORM

1. (AIA Document G702 and G703)

APPLICATION AND CERTIFICATE FOR PAYMENT

PAGE ONE OF 2 PAGES

TO OWNER:

PROJECT:

APPLICATION #:

Distribution to:

PERIOD TO:

PROJECT NOS:

☐ Owner

FROM CONTRACTOR:

VIA ARCHITECT:

CONTRACT DATE:

☐ Const. Mgr

☐ Architect

☐ Contractor

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR:

By: _____ Date: _____

State of: _____

County of: _____

Subscribed and sworn to before
me this _____ day of _____

Notary Public: _____

My Commission expires: _____

CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ----- \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

1. ORIGINAL CONTRACT SUM-----	\$	_____
2. Net change by Change Orders-----	\$	_____
3. CONTRACT SUM TO DATE (Line 1 +/- 2)-----	\$	_____
4. TOTAL COMPLETED & STORED TO DATE-\$ (Column G on Continuation Sheet)	\$	_____
5. RETAINAGE:		
a. 5.0% of Completed Work (Columns D+E on Continuation Sheet)	\$	_____
b. 10.0% of Stored Material (Column F on Continuation Sheet)	\$	_____
Total Retainage (Line 5a + 5b or Total in Column 1 of Continuation Sheet)-----	\$	_____
6. TOTAL EARNED LESS RETAINAGE----- (Line 4 less Line 5 Total)	\$	_____
7. LESS PREVIOUS CERTIFICATE S FOR PAYMENT (Line 6 from prior Certificate)-----	\$	_____
8. CURRENT PAYMENT DUE-----	\$	_____
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	_____

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS		
NET CHANGES by Change Order		

2.

3.

CONTINUATION SHEET

ATTACHMENT TO PAY APPLICATION
PROJECT:

Page 2 of 2 Pages

APPLICATION NUMBER:

APPLICATION DATE:

PERIOD TO:

ARCHITECT'S PROJECT NO:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G		H Balance To Finish (C - G)	I Retainage
			From Previous Application (D + E)	This Period		Total Completed And Stored To Date (D + E + F)	% (G/C)		
1						\$ -		\$ -	\$ -
2						\$ -		\$ -	\$ -
3						\$ -		\$ -	\$ -
4						\$ -		\$ -	\$ -
5						\$ -		\$ -	\$ -
6						\$ -		\$ -	\$ -
7						\$ -		\$ -	\$ -
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24						\$ -		\$ -	\$ -
25						\$ -		\$ -	\$ -
SUBTOTALS PAGE 2		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -

4.

SAMPLE CERTIFICATION AND RELEASE



Certification and Release

Agreement No # _____

From:

To:

North County Transit District

Contractor

Owner

Reference Contract entered into the _____ day of _____, _____ between

North County Transit District

of

810 Mission Avenue, Oceanside, CA 92054

and

Owner of property

address of owner

of

for

Contractor

address of contractor

Name of Project: _____

KNOW ALL MEN BY THESE PRESENT

1. The undersigned hereby certifies that there is due from and payable by the Owner to the Contractor the balance of \$_____ pursuant to the Contract and duly Approved Change Orders and modifications.
2. The undersigned further certifies that in addition to the amount set forth in Paragraph 1, there are outstanding and unsettled the following items, which the Contractor claims are just and due and owing by the Owner to the Contractor:
 - A. _____
 - B. _____
3. The undersigned further certifies that all work required under this Contract has been performed in accordance with the terms of thereof, and that there are no unpaid claims for materials, supplies, or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of this Contract.
4. Except for the amount stated under Paragraphs 1 and 2 hereof, the undersigned has received from the Owner all sums of money payable to the undersigned under or pursuant to the above mentioned Contract or any modification or change thereof.
5. That in consideration of the payment of the amount stated in Paragraph 1 hereof, the undersigned does hereby release the Owner from any and all claims arising under or by virtue of the Contract, except the amount listed in Paragraph 2 hereof; provided, however, that if for any reason the owner does not pay in full the amount stated in Paragraph 1 hereof, said unpaid amount shall be automatically included under Paragraph 2 as an amount which the payment of the amount listed in Paragraph 1, hereof, he will release the Owner from any and all claims of any nature whatsoever arising out of said Contract or modification thereof, and will execute such further releases or assurances as the Owner may request.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument this date of

_____, _____

Company Name

By:

Signature

Name and Title

SAMPLE FLAG PROTECTION RIGHT-OF-WAY REQUEST

Flagging Protection and Signal Support forms can be found in the following link:

<https://gonctd.com/about-nctd/accountability/working-around-the-rails/>