

# **Volume I** – Administrative Forms

## AD Form A: Proposal Letter

### Instructions:

The signature block for the Proposer must be inserted to properly reflect the authority of the person signing, in accordance with the instructions at the end of this letter. If the Proposer is a partnership, consortium, or joint venture, the Proposal Letter must be executed by all general partners or consortium or joint venture members (as applicable).

An authorized representative of each Major Participant must sign the certification set out at the end of the Proposal Letter.

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Name of Proposer: The Boring Company (the “**Proposer**”)

Date: October 17, 2022

CIP Procurement Manager

City of San José

200 E. Santa Clara St.

San José, CA 95113

Re: REQUEST FOR PROPOSALS (DOT 10183): TO DEVELOP A SCALABLE TRANSIT SOLUTION THAT CONNECTS SJC TO DIRIDON STATION IN DOWNTOWN SAN JOSÉ

On behalf of the Proposer, the undersigned submit the documents described in Paragraph 1 of this Proposal Letter (collectively, the “**Proposal**”) in response to the Request for Proposals (“**RFP**”) to seek competitive detailed proposals to enter into a Predevelopment Agreement with the City of San José (the “**City**”) to develop a proposed transit connection between the San José Mineta International Airport and Diridon Station in Downtown San José (the “**Project**”).

All capitalized terms used but not defined in this Proposal Letter have the meanings set out in the RFP.

1. Enclosed with this Proposal Letter are the following:
  - a. Proposal of the Proposer, consisting of each of the items listed and a copy of the checklist provided in Appendix B (Summary and Checklist of Proposal Contents) of the RFP
  - b. Letter of Authorization for Michael Thompson to act on behalf of The Boring Company
2. The Proposer represents and warrants that the representations, certifications, statements, disclosures, authorizations, and commitments made, and information contained in the Proposal is or are correct, complete, and not materially misleading.
3. In consideration for the City supplying the Proposer with the RFP and agreeing to examine and consider the Proposal, the undersigned, undertakes to keep our Proposal open for acceptance by the City initially for a period of 210 consecutive days commencing on (and including) the Proposal Due Date, without unilaterally varying or amending its terms and without any team member or partner withdrawing or any other change being made in the composition of the partnership/joint venture on whose behalf the Proposal is submitted, without first obtaining the prior written consent of the City, in the City’s sole discretion.

4. The following individual(s) is/are authorized to enter into negotiations with the City on behalf of the Proposer in connection with the RFP, the Project, and the PDA:

Steven Davis, President

Arun Prakash, Chief Financial Officer

Michael Thompson, Project Director

Ashley Steinberg, Head of Legal Affairs

5. If identified as a Preferred Proposer by the City, the Proposer agrees to do the following:
- a. Finalize, execute, and deliver the PDA solely as provided in Sections 8.3 (Finalization of PDA with Preferred Proposer) and 8.4 (Predevelopment Agreement Execution) of the RFP, no later than the deadline for execution of the PDA set out in Section 8.4 (Predevelopment Agreement Execution) of the RFP;
  - b. Cooperate with the City to finalize and execute the PDA included in the RFP, without any revisions except with respect to the following:
    - i. Minor changes, additions, and modifications necessary to create a complete and legally binding contract
    - ii. Inclusion of the Preferred Proposer's Proposal in Exhibit 4 (Developer Commitments) of the PDA as contemplated under Section 5.8 (Inclusion of Proposal in the PDA) of the RFP or otherwise required in order to incorporate terms or concepts, and any commitments above and beyond what is required by the Transaction Documents provided in the Proposal submitted by the Preferred Proposer that have been approved or required by the City for inclusion in the PDA
    - iii. Additions or modifications required to complete the schedules, exhibits, appendices, or forms, as applicable, in the PDA
  - c. Satisfy any other requirements for execution of the PDA and issuance of the Notice to Proceed for PDA Phase 1 as stipulated in the RFP and/or the PDA, and perform its obligations as set out in the RFP and the PDA, including compliance with all commitments contained in the Proposal
6. The Proposer acknowledges timely and complete performance of the obligations of the Proposer as described under paragraph 6 is secured by the Proposal Security, one original of which has been submitted as part of this Proposal. In submitting its Proposal, the Proposer understands and agrees that the disposition of, and the Parties' respective rights with respect to, the Proposal Security will be subject to the terms of Section 6.5 (Proposal Security) of the RFP.
7. The Proposer certifies that:
- a. Its Proposal meets the requirements as to format and content as specified in the RFP.
  - b. The Proposer has only submitted one Proposal.
  - c. The only persons, firms, companies, corporations, joint ventures/partnerships, and/or other parties interested in the Proposal as the Proposer, Major Participants, or named subcontractors are those listed as such in the Proposal.
  - d. Its Proposal is submitted without reservation, qualification, assumptions, deviations, or conditions.
  - e. It has carefully examined and is fully familiar with all of the provisions of the RFP and has reviewed (i) all materials provided by the City on the Procurement Portal and from the City's Contact Person;

- (ii) the Addenda; and (iii) the City’s responses to any RFP Comments and is satisfied that the RFP provides sufficient detail regarding the obligations to be performed by the Developer and does not contain internal inconsistencies, errors, or omissions.
  - f. It has carefully checked the accuracy of all the words, figures, and statements in the Proposal.
  - g. It is satisfied as to the conditions to be encountered in performing the scope of work under the PDA and the terms of the PDA.
  - h. It has examined the experience, skill, and certification (if any) requirements specified under the PDA terms and the Proposer and Major Participants intended to perform the work fulfill any applicable requirements.
  - i. It has notified the City of any deficiencies in or omissions from the RFP or other documents provided by the City.
8. The Proposer understands and agrees that the City will be under no obligation to make a selection of any Proposer in response to the RFP. Should a Preferred Proposer fail to execute (or cause the entity identified as the Developer to execute) a PDA in accordance with the requirements of the RFP, the City reserves the right, in the City’s sole discretion, to select an alternative Preferred Proposer to execute a PDA. Further, the Proposer understands and agrees that the City may select up to two Preferred Proposers.
  9. The Proposer understands and agrees that all costs and expenses incurred by it in preparing the Proposal and participating in the RFP process will be borne solely by the Proposer.
  10. The Proposer understands that portions of a Preferred Proposer’s Proposal may be attached as exhibits and incorporated into the PDA and in such case will be binding obligations of the Developer under the PDA in accordance with Section 5.8 (Inclusion of Proposal in the PDA) of the RFP.
  11. The Proposer consents to the City’s disclosure of its Proposal to any persons as required by Applicable Law. The Proposer acknowledges and agrees to the disclosure terms described in Section 4.4 (Public Records Laws) of the RFP. The Proposer expressly waives any right to contest such disclosures by the City.
  12. The Proposer agrees that:
    - a. The City will not be responsible for any errors, omissions, inaccuracies, or incomplete statements in the Proposal.
    - b. The City’s acceptance of the Proposal does not constitute any statement or determination as to its completeness, responsiveness, or compliance with the requirements of the RFP.
    - c. In the event a substantive difference is identified, at any time prior to or following Commercial Close, between the Proposer’s Proposal and any provision in the PDA (including the Technical Requirements), the provisions of the PDA will control and the Proposer will not be entitled to alter its Proposal.

**THE BORING COMPANY**



By:

Name and Title:

Michael Thompson, Project Director

Date:

October 17, 2022

## Major Participants

Each of the undersigned certifies under penalty of perjury under the laws of the State of California, on behalf of the entity for which he or she signs, that:

13. The Proposer's authorized representative named above is authorized by the relevant entity to sign this Proposal Letter on behalf of the Proposer
14. The representations, certifications, statements, disclosures, authorizations and commitments made, and information contained in the Proposal in respect of such entity have been authorized by such entity and is or are correct, complete, and not materially misleading
15. He or she is authorized to act on behalf of the entity for which he or she signs and acknowledges that the City is relying on his or her representation to this effect<sup>1</sup>

THE BORING COMPANY

By its authorized representative:

Signature of authorized representative:



Name and Title:

Michael Thompson, Project Director

Date:

October 17, 2022

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<sup>1</sup> Signature block below to be repeated for each Major Participant.

## **AD Form B: Proposal Security**

### **Part A: Form of Proposal Letter of Credit**

Per the proposal bond provider, AD Form B, Part A is for a security in the form of a letter of credit. Since The Boring Company is submitting a proposal bond as a security, a letter of credit is not required in addition to the proposal bond. The Boring Company is prepared to provide a letter of credit if required.

## Part B: Form of Proposal Bond

**Bond No.** 94830-Euler-22-001

**WHEREAS**, on 10/14/2022, The Boring Company, a Company ("Principal"), submitted its Proposal to the City of San José ("Obligee"), in response to Obligee's Request for Proposals (as amended or supplemented the "RFP") to seek competitive proposals to develop a proposed transit connection between the San José Mineta International Airport and Diridon Station in Downtown San José (the "Project"), initially through a predevelopment agreement with the Obligee (the "PDA").

**WHEREAS**, Principal is required to furnish this bond as a condition to Obligee's acceptance of the Proposal.

**NOW, THEREFORE**, Principal and Euler Hermes North America Insurance Company, a Company ("Surety"), an admitted surety insurer in the State of California, are held and firmly bound unto Obligee in the amount of \$200,000.00 (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their heirs, executors, administrators, representatives, successors, and assigns.

### THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

Concurrently with the delivery of this Bond to Obligee, Principal is submitting a Proposal to Obligee for the scope of work and services for the Project as described in the RFP and PDA.

**NOW, THEREFORE**, Principal and Obligee agree as follows:

43. The obligation to pay the Bonded Sum hereunder is absolute and unconditional, and unless said obligation is sooner discharged as provided below, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the "Co-Sureties") of notice of such forfeiture from Obligee.
44. If Obligee has not previously delivered notice of forfeiture hereunder, upon occurrence of any of the following events, then this obligation shall be null and void; otherwise it shall remain in full force and effect:
  - a. Principal's receipt of written notification from Obligee that (i) the Obligee has cancelled the RFP, or (ii) Obligee has awarded a PDA(s) for the Project to another Preferred Proposer(s) that is not the Principal, has received the executed PDA(s) from that Preferred Proposer(s) and other required documents, and does not intend to award the PDA to Principal
  - b. Expiry of the Proposal Validity Period
  - c. Following selection of Principal as a Preferred Proposer, Principal's performance of all of its obligations under the RFP in connection with award of the PDA, including execution and delivery of the PDA and delivery of all other items required to be provided under the RFP as a condition to award and execution and delivery of the PDA
45. Correspondence or claims relating to this Proposal Bond should be sent to Surety at the following address  
800 Red Brook Blvd Baltimore, MD 21117.
46. If a lawsuit is brought on this bond by Obligee and judgment is recovered, Principal and Surety shall pay all costs incurred by Obligee in bringing such lawsuit, including, without limitation, actual attorneys' fees and costs as determined by the court.
47. Surety agrees that its obligation shall not be impaired by any extension(s) of the time for acceptance of Principal's Proposal that Principal may grant to Obligee, in accordance with the RFP or otherwise, and waives any notice of such extension(s).
48. This agreement shall be binding on the Principal and Surety executing the same, their legal representatives, successors, and assigns.



49. Capitalized terms used but not defined above shall have the following meaning:

**“Preferred Proposer”** means the Proposer or two Proposers that offer the City the best value for the Project, as determined and notified in accordance with the evaluation and selection process set out in the RFP.

**“Proposal Due Date”** means the date and time by which the Proposal must be submitted as shown in the RFP (as amended or supplemented).

**“Proposal Validity Period”** means a period of 180 consecutive days commencing on (and including) the Proposal Due Date, as such period may be extended in accordance with the RFP.

**IN WITNESS WHEREOF**, Principal and Surety have caused this bond to be executed and delivered as of  
October 10, 2022.

**Principal:** The Boring Company

By: 

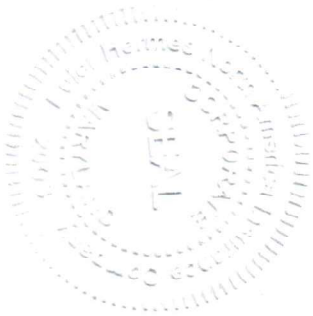
Its: Corporate Controller

**Co-Sureties:** Euler Hermes North America Insurance Company

By: 

Ann Mullins, Attorney in Fact  
Attorney-in-Fact

[Add appropriate Surety acknowledgments]



# All-Purpose Certificate of Acknowledgment

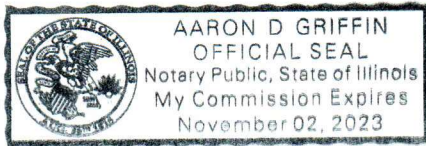
State of Illinois  
City of Chicago }

On October 10, 2022 before me, Aaron D. Griffin,  
DATE NAME OF NOTARY PUBLIC

personally appeared Ann Mullins  
NAME(S) OF SIGNER(S)

☒ personally known to me - OR

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.

  
SIGNATURE OF NOTARY PUBLIC

Though the data below is not required by law, it may prove valuable to persons relying on the document and prevent fraudulent reattachment of this form.

## CAPACITY CLAIMED BY SIGNER

- ☐ Individual(s)  
☐ Corporate Officer:  
☐ Title(s)  
☐ Partner(s)  
☒ Attorney-in-Fact  
☐ Trustee(s)  
☐ Subscribing Witness  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

## DESCRIPTION OF ATTACHED DOCUMENT(S)

Type of Document

**Bid Bond**

Number of Pages

**4**

Date of Document

**October 10, 2022**

Signer(s) Other Than Named Above

## SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

**Euler Hermes North America Insurance Company**



**EULER HERMES NORTH AMERICA INSURANCE COMPANY**  
800 Red Brook Boulevard \* Owings Mills, Maryland 21117

The number of persons authorized by this  
Power of Attorney is not more than:

**3 POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That EULER HERMES NORTH AMERICA INSURANCE COMPANY (EULER HERMES), a corporation organized and existing under the laws of the state of Maryland, does hereby nominate, constitute, and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for and in its name, place, and stead to execute on behalf of EULER HERMES, as surety, any and all bonds, undertakings, and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of EULER HERMES on any such bond, undertaking, or contract of suretyship executed under this authority shall not exceed the limit stated below.

NAME	ADDRESS	LIMIT OF POWER
Aaron D. Griffin	Marsh USA Inc.	Unlimited
Ann Mullins	540 W. Madison St.	
Daniel Machado	Suite 1100	
	Chicago, IL 60661	

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF, EULER HERMES has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunder affixed this 1st day of January, 20 21.



*[Signature]*

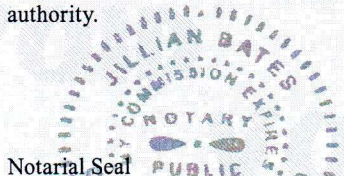
James Daly, President and CEO-The Americas

*[Signature]*

Keith Sherman, Senior Vice President and  
Chief Operating Officer-Surety

State of Maryland, County of Baltimore

On this 1st day of January, 20 21, before me personally appeared Keith Sherman, to me known, being duly sworn, deposes and says that he resides in Phoenix, MD; that he is the Senior Vice President and Operating Officer-Surety of EULER HERMES, the Company described herein and which executed the above instrument; that he know the seal of EULER HERMES; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of EULER HERMES; and that he signed his name thereto by like authority.



*[Signature]*

Notary Public

**This Commission Expires April 4, 2023**

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of EULER HERMES NORTH AMERICA INSURANCE COMPANY (Company) by unanimous consent on October 1, 2015.

RESOLVED: That the President, Executive Vice President, Senior Vice President, Vice President, Secretary, Assistant Vice Secretary, and Senior Vice President and Chief Operating Officer-Surety, be and hereby are authorized from time to time to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligation in the nature thereof; to proscribe their respective duties and all respective limits of their authority; and to revoke any such appointment at any time.

RESOLVED FURTHER: That the Company seal and signature of the aforesaid officers and may be affixed by facsimile to any Power of Attorney given for the execution of any bond, undertaking, contract of suretyship, or other written obligations in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as thought manually affixed.

**CERTIFICATION**

I, Keith Sherman, Senior Vice President and Chief Operating Officer-Surety of EULER HERMES NORTH AMERICA INSURANCE COMPANY, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of October 1, 2015, have not been revoked and are now in full force and effect.

Signed and sealed this 10<sup>th</sup> day of October, 20 22.



*[Signature]*

Keith Sherman, Senior Vice President and  
Chief Operating Officer-Surety





## AD Form C: Proposer, Major Participant, and Subcontractor Information

### Instructions:

Complete this form for the Proposer, each Major Participant, and any other subcontractors proposed and named as part of the Development Team under the Proposer's Proposal.

Provide the name of the Proposer and state whether it is also the potential Developer or whether a separate entity will be formed to enter into the PDA. If the potential Developer has been formed, complete Part A of this form in full. If the potential Developer has not yet been formed, complete only the relevant portions of Part A of the form and complete Part B in full for each identified Equity Member and other Major Participant and subcontractors proposed and named as part of the Development Team under the Proposer's Proposal.

Repeat the table in Part B for each Major Participant and named subcontractor.

If information requested in relation to a Person is not relevant to such Person, state "Not Applicable."

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### PART A: Proposer

**Proposer Name:** The Boring Company

1. Identify the Proposer's authorized representative(s):

<b>Name:</b>	Steven Davis
<b>Title:</b>	President
<b>Address:</b>	130 Walker-Watson Road, Bastrop, TX 78602
<b>Email:</b>	steve@boringcompany.com

<b>Name:</b>	Arun Prakash
<b>Title:</b>	Chief Financial Officer
<b>Address:</b>	130 Walker-Watson Road, Bastrop, TX 78602
<b>Email:</b>	arun@boringcompany.com

<b>Name:</b>	Michael Thompson
<b>Title:</b>	Project Director
<b>Address:</b>	130 Walker-Watson Road, Bastrop, TX 78602
<b>Email:</b>	mike.thompson@boringcompany.com

<b>Name:</b>	Ashley Steinberg
<b>Title:</b>	Head of Legal Affairs

<b>Address:</b>	3395 Cambridge St, Warehouse A, Las Vegas, NV 89169
<b>Email:</b>	ashley@boringcompany.com

2. Is the Proposer intended as the potential Developer: ☒ Yes ☐ No
3. List all the potential Developer's proposed Equity Members below, including their intended equity share:

<b>Equity Member</b>	<b>Intended equity share in Developer (%)</b>	<b>Intended additional roles (if any)</b>
The Boring Company	100%	

4. If the potential Developer has been formed (that is, the Proposer is also the potential Developer), complete the remainder of this Part A:

<b>Type of Legal Entity:</b>	<input checked="checked" type="checkbox"/> Corporation <input type="checkbox"/> Limited liability company <input type="checkbox"/> Joint venture <input type="checkbox"/> Partnership <input type="checkbox"/> Other: <i>[Proposer to provide]</i> If the Proposer is a form of organization other than a corporation, list the name of each member entity: 1. [      ] 2. [      ]
<b>Year Established:</b>	2017
<b>Federal Tax ID No.:</b>	82-0839443
<b>North American Industry Classification Code:</b>	23,237
<b>Country (and where applicable, State/Province) of Organization or Formation:</b>	Delaware
<b>Change in Details:</b> <i>If the Person has changed their address, or if the entity or its owner has operated under any other name(s), or if there has been a change in ownership of the Person in the past five years, explain fully here.</i>	
<b>Headquarters:</b>	130 Walker-Watson Road, Bastrop, TX 78602
<b>Office Performing Work:</b>	130 Walker-Watson Road, Bastrop, TX 78602
<b>Contact Person, Email, and Telephone Number:</b>	Michael Thompson (Project Director) <a href="mailto:mike.thompson@boringcompany.com">mike.thompson@boringcompany.com</a> (310) 936-5063

AUTHORIZED REPRESENTATIVE:

I certify that the foregoing is true and correct, and that I am the authorized representative of the Proposer:



Signature of authorized representative:

Name and Title:

Michael Thompson, Project Director

Date:

October 17, 2022

**PART B: Major Participants and other subcontractors named as part of the Development Team**

*[Repeat this Part B for each Major Participant and other subcontractor named in the Proposal]*

1. Identify the Major Participant's or other subcontractor's authorized representative(s):

<b>Name:</b>	N/A
<b>Title:</b>	N/A
<b>Address:</b>	N/A
<b>Email:</b>	N/A

2. Complete this table:

<b>Name:</b>	
<b>Role:</b>	<input type="checkbox"/> Equity Member <input type="checkbox"/> Lead Designer <input type="checkbox"/> Technology Provider <input type="checkbox"/> Lead D&C Contractor <input type="checkbox"/> O&M Provider <input type="checkbox"/> Subcontractor <input type="checkbox"/> Member of Proposer, Major Participant, or other subcontractor
<b>Type of Legal Entity:</b>	<input type="checkbox"/> Corporation <input type="checkbox"/> Limited liability company <input type="checkbox"/> Joint venture <input type="checkbox"/> Partnership <input type="checkbox"/> Other: <i>[Proposer to provide]</i> If the Proposer is a form of organization other than a corporation, list the name of each member entity: [      ] [      ]
<b>Year Established:</b>	N/A
<b>Federal Tax ID No.:</b>	N/A
<b>North American Industry Classification Code:</b>	N/A
<b>Country (and where applicable, State/Province) of Organization or Formation:</b>	N/A
<b>Change in Details:</b> If the Person has changed their address, or if the entity or its owner has operated under any other name(s), or if there has been a change in ownership of the Person in the past five years, explain fully here.	N/A
<b>Headquarters:</b>	N/A
<b>Office Performing Work:</b>	N/A

<b>Contact Person, Email, and Telephone Number:</b>	N/A
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**AUTHORIZED REPRESENTATIVE:**

I certify that the foregoing is true and correct, and that I am the authorized representative of the Person to whom this form relates:

Signature of authorized representative: \_\_\_\_\_ N/A

Name and Title: \_\_\_\_\_ N/A

Date: \_\_\_\_\_ N/A



## ATTACHMENTS

For the purposes of these instructions, a “**Relevant Person**” is any of the Proposer, each Major Participant, and each other subcontractor named as part of the Development Team in the Proposal.

3. Attach evidence that the Person(s) names as authorized representative(s) of a Relevant Person has the authority to sign and deliver the Proposal or any applicable part of it on behalf of the that Relevant Person. Such evidence of authorization must include the following:
  - a. Corporation. If the Relevant Person is a corporation, it must provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation.
  - b. Partnership. If the Relevant Person is a partnership, such evidence must be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner.
  - c. Joint Venture/Consortium. If the Relevant Person is a joint venture or consortium, such evidence must be in the form of an irrevocable power of attorney or a resolution of each consortium or joint venture member, certified by an appropriate office of such consortium or joint venture member.
  - d. LLC. If the Relevant Person is a limited liability company, such evidence must be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member must provide the foregoing information.
  - e. Attorney-in-Fact. If an authorized signatory is signing as attorney-in-fact, such evidence must be in the form of an executed irrevocable power of attorney executed by the relevant Person or Persons, along with evidence of authorization for execution of such power of attorney as described under (a) to (d) above.
4. Attach the following information regarding the legal structure of each Relevant Person:
  - a. If the Relevant Person is a corporation or includes a corporation as a joint venture member, partner, or member, provide articles of incorporation and bylaws for the Relevant Person and each corporation certified by an appropriate officer. If any entity is not yet formed, so state and indicate that these documents will be provided prior to execution of the PDA.
  - b. If the Relevant Person is a partnership or includes a partnership as a joint venture member, partner, or member, attach full names and addresses of all partners and equity ownership interest of each entity, provide the incorporation, formation, and organizational documentation for the Relevant Person (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company, and joint venture agreement for a joint venture) certified by an appropriate officer. If any entity is not yet formed, so state and indicate that these documents will be provided prior to execution of the PDA.
  - c. If the Relevant Person is a consortium or joint venture or includes a joint venture as a joint venture member, partner, or member, attach full names and addresses of all consortium or joint venture members and the equity ownership interest of each entity, provide the incorporation, formation, and organizational documentation for the Relevant Person (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company, and joint venture agreement for a joint venture) certified by an appropriate officer. If any entity is not yet formed, so state and indicate that these documents will be provided prior to execution of the PDA.

- d. If the Relevant Person is a limited liability company or includes a limited liability company as a joint venture member, partner, or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation, and organizational documentation for the Relevant Person (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company, and joint venture agreement for a joint venture) certified by an appropriate officer. If any entity is not yet formed, so state and indicate that these documents will be provided prior to execution of the PDA.
- e. If the Relevant Person is an investment fund, acting through its fund manager, the incorporation, formation, and organizational documents of the fund manager shall satisfy the requirements for organization documents under these instructions.

**WRITTEN CONSENT OF THE SOLE DIRECTOR  
OF  
TBC – THE BORING COMPANY**

The undersigned, constituting the sole member of the Board of Directors of TBC – THE BORING COMPANY, a Delaware corporation (the “**Company**”), acting pursuant to Section 141(f) of the Delaware General Corporation Law, hereby adopts the following resolution with preamble by written consent:

WHEREAS, the Company desires to respond to a Request for Proposals (DOT 10183) issued by the City of San Jose, California (the “**RFP**”); and

WHEREAS, the Board of Directors desires to designate authorized representatives who have the authority to sign and deliver a Proposal (as defined in the RFP) or any applicable part of it on behalf of the Company.

NOW, THEREFORE, BE IT RESOLVED, that Michael Thompson and Arun Prakash each acting alone or both acting together, are designated as authorized representatives of the Company with independent authority to sign and deliver a Proposal or any applicable part of it on behalf of the Company, and to take such further actions in connection with the Proposal or any applicable part of it as each such authorized representative determines, in his or her sole discretion, is in the best interests of the Company.

Dated: October 17, 2022

  
\_\_\_\_\_  
JARED BIRCHALL

## SECRETARY'S CERTIFICATE

I, JARED BIRCHALL, hereby certify that I am the duly elected and acting Secretary of TBC – THE BORING COMPANY, a Delaware corporation (the "**Company**"), and that I am duly authorized to execute and deliver this Secretary's Certificate on behalf of the Company. I hereby further certify on behalf of the Company that:

Attached hereto as Exhibit A is a true, correct, and complete copy of recitals and a resolution of the Board of Directors of the Company (the "**Resolutions**"). The Resolutions were duly adopted by the Board of Directors. The Resolutions have not been rescinded, amended or otherwise modified since the date of their adoption and are in full force and effect on the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this Secretary's Certificate on behalf of the Company on this \_\_\_\_ day of October, 2022.

TBC – THE BORING COMPANY


By:  \_\_\_\_\_  
Jared Birchall  
Secretary

EXHIBIT A  
RESOLUTIONS OF THE BOARD OF DIRECTORS

WHEREAS, the Company desires to respond to a Request for Proposals (DOT 10183) issued by the City of San Jose, California (the “RFP”); and

WHEREAS, the Board of Directors desires to designate authorized representatives who have the authority to sign and deliver a Proposal (as defined in the RFP) or any applicable part of it on behalf of the Company.

NOW, THEREFORE, BE IT RESOLVED, that Michael Thompson and Arun Prakash, each acting alone or both acting together, are designated as authorized representatives of the Company with independent authority to sign and deliver a Proposal or any applicable part of it on behalf of the Company, and to take such further actions in connection with the Proposal or any applicable part of it as each such authorized representative determines, in his or her sole discretion, is in the best interests of the Company.

## Executive Summary

The Boring Company (TBC) is pleased to submit this proposal to the City of San José ("City") to design, construct, operate, and maintain SJC Loop, a 3.4-mile, low-cost, high-capacity transportation system which will transport passengers from the Norman Y. Mineta International Airport (SJC) to San José Diridon Station in under 6 minutes.

SJC Loop (the Project) is an underground transportation solution that will enable rapid, comfortable movement of people between Diridon Station, SJC, and beyond without impacting traffic patterns on surface streets or creating environmental or community impacts. SJC Loop will facilitate economic development, tourism growth, and fast local travel for residents of San José. Within SJC, Loop Vehicles will carry passengers on express routes directly to their destinations in a fraction of the time of traditional transit systems. SJC Loop will provide an initial capacity of over 6,400 passengers per hour across the system including over 1,600 passengers per hour per direction in and out of San José International Airport and between Terminals A and B.



This project leverages TBC's leadership in tunnel construction and transportation operations to provide an integrated, affordable, and reliable public transportation option to serve San José. Loop is designed to accommodate future expansion locally by adding intermediate stations along the route as well as tunnel extensions, some of which could include connections to Stevens Creek and other key transportation corridors.

SJC Loop will incorporate TBC's Loop service, which has been selected for several high-profile projects including the Las Vegas Convention Center Loop, Vegas Loop, and other early-stage Loop projects. TBC's standardization of tunnel construction, vehicle operation, and other system components across projects translates to increased reliability and reduced costs to build and operate the system.

Considering the low cost to operate SJC Loop and the market demand for a fast, safe, and convenient transportation connection between Diridon Station, SJC, and beyond, TBC projects that this project will generate revenue from fares to support construction and operating costs. As such, TBC is prepared to finance the full cost of the Project without the need of public funding while taking on 100% of revenue risk.

### SJC Loop

Norman Y. Mineta International Airport and Downtown San José Diridon Station

Compared to other transportation solutions, TBC's underground system offers reduced total cost, less disruption to pedestrian and vehicle traffic, faster construction time, and shorter passenger travel times. SJC Loop provides an exceptional alternative to traditional surface and elevated transportation solutions. TBC is excited to work with the City and other stakeholders in San José to rapidly develop and deploy this project.

### AD Form D: Bidders List

The City of San José (“City”) is required per 49 CFR 26.11(c) to create and maintain a comprehensive Bidders List. This Bidders List form will be used to determine the relative availability of Disadvantaged Business Enterprises (“DBEs”) and non-DBEs. The Bidders List is a compilation of bidders, Proposers, quoters, subcontractors, manufacturers, and suppliers of materials and services that have submitted bids (to the primary bidder) during the advertising period of a specific acquisition (whether or not they are successful in their attempt to obtain a contract). Please provide the following mandatory data:

#### BIDDER 1: BUSINESS DATA

Business Name:

N/A

Business Address:

Street

City

State

Zip

Name of Contact Person:

Phone:

Email Address:

Type of Work:

Is this firm a certified DBE?

a. ☒ Yes

b. ☐ No

Age of Business:

Years

Months

Annual  
Receipts:

Gross

a. ☐ Less than \$500,000

b. ☐ \$500,000 to \$1,000,000

c. ☐ \$1,000,000 to \$2,000,000

d. ☐ \$2,000,000 to \$5,000,000

e. ☐ Over \$5,000,000

#### BIDDER 2: BUSINESS DATA

Business Name:

Business Address:

Street

City

State

Zip

Name of Contact Person:

Phone:

Email Address:

Type of Work:

Is this firm a certified DBE?

a. ☐ Yes

b. ☐ No

Age of Business:

Years

Months

Annual  
Receipts:

Gross

a. ☐ Less than \$500,000

b. ☐ \$500,000 to \$1,000,000

c. ☐ \$1,000,000 to \$2,000,000

d. ☐ \$2,000,000 to \$5,000,000

e. ☐ Over \$5,000,000



**BIDDER 3: BUSINESS DATA**

Business Name:

Business Address:

Street

City

State

Zip

Name of Contact Person:

Phone:

Email Address:

Type of Work:

Is this firm a certified DBE?

a. ☐ Yes

b. ☐ No

Age of Business:

Years

Months

Annual  
Receipts:

Gross

a. ☐ Less than \$500,000

b. ☐ \$500,000 to \$1,000,000

c. ☐ \$1,000,000 to \$2,000,000

d. ☐ \$2,000,000 to \$5,000,000

e. ☐ Over \$5,000,000

If necessary, this Bidders List form can be duplicated to include all firms (DBE and non-DBE) that have submitted a bid, Proposal, or quote on this Project.

## AD Form E: Ethics Declaration

### Instructions:

Complete this form for the Proposer, each Major Participant, and any other subcontractors proposed and named as part of the Development Team under the Proposer's Proposal (executed by the authorized representative of the Proposer, relevant Major Participant, or subcontractor).

**PROPOSER:** The Boring Company

MAJOR PARTICIPANT OR SUBCONTRACTOR (if applicable): \_\_\_\_\_

1. The following questions in Section D below are designed to ensure contractors, subcontractors, and the City are able to comply with their obligations to avoid conflict of interest issues. Your company, including all parents, subsidiaries, affiliates, and "otherwise related business entities," as that term is defined in 2 California Code of Regulations 18438.5(b)(2) (collectively, "**Declarant Company**"), should make or cause to be made a reasonably diligent investigation prior to responding to the questions in Section D to ensure the responses are correct and a person legally authorized to act for or on behalf of the Declarant Company ("**Authorized Representative**") signs below where indicated.

The Authorized Representative is responding on behalf of Declarant Company that Declarant Company has been designated to perform the work requested in the solicitation.

An affirmative response to any of the questions in Section D will not automatically cause Declarant Company to be disqualified. However, failure to answer the questions in good faith or providing material false answers may subject Declarant Company to consequences up to and including disqualification of its Proposal.

For questions related to this Ethics Declaration, please contact the City in accordance with the communication protocols set out under the RFP.

2. State the name(s) of your company and all parents, subsidiaries, affiliates, and "otherwise related business entities" comprising the Declarant Company. If none, circle "none" under each category below:

Name of parent: \_\_\_\_\_ / **(none)**

Name of subsidiaries (use additional sheet if necessary): \_\_\_\_\_ / **(none)**

Name of affiliates (use additional sheet if necessary): \_\_\_\_\_ / **(none)**

Name of "otherwise related business entities" (use additional sheet if necessary):  
\_\_\_\_\_ / **(none)**

For the purposes of this Ethics Declaration, the term "Employee(s)" shall be defined as employees, officers, shareholders, partners, owners, or directors of the Declarant Company.

For the purposes of this Ethics Declaration, the term "City designated employee" shall have the meaning as defined in Chapter 12.10 of the City's Municipal Code.

Please answer the following questions:

	Questions	Yes/No
1.	In the past 12 months, has any Employee been a City officer or City designated employee?	No
2.	Is any Employee related to any City officer or City designated employee?	No
3.	Is any Employee presently a City officer or City designated employee?	No
4.	Do any City officers or City designated employees own any stock in the Declarant Company?	No
5.	In the past 12 months, has any Employee given any gifts to a City officer or City designated employee?	No
6.	Does the Declarant Company now employ as a lobbyist, or intend to employ as a lobbyist, any City officer or City designated employee in the past 12 months?	No
7.	Did any Employee receive, or have access to, any confidential information concerning the Project and PDA (other than information released publicly or as part of the RFP)?	No
8.	Did any Employee perform work within the past 3 years relating to the Project or the work contemplated to be performed under the PDA, including (a) the development of the Technical Requirements or any other specifications, or (b) earlier phases of the Project or work to be provided under the PDA?	No
9.	Are you aware of any other relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Major Participants, proposed subcontractors, Affiliates of those Persons, and their respective chief executives, directors, and other personnel intended to be assigned to the Project) that may result in, or could be viewed as, an organizational conflict of interest pursuant to Section 4.2.3 (Conflict of Interest) of the RFP, including a redisclosure of any organizational conflict of interest that the Proposer previously disclosed?	No
10.	If you answered "yes" to any of questions 1 through 9 above, provide, on a separate sheet, a detailed explanation of the facts and circumstances that give rise to the answer "yes." This explanation shall contain all relevant facts and information. This explanation shall include names, dates, facts, amounts, and anything else necessary for a thorough response. Each explanation shall identify which of the 9 questions it is responding to, and a separate explanation for each "yes" response is required.	N/A

By signing this Ethics Declaration, the Declarant Company attests that (1) it has read, understands, and shall abide by the "Procurement and Contract Process Integrity and Conflict of Interest," Section 7 of the Consolidated Open Government and Ethics Provisions adopted on August 26, 2014 (the "**Policy**"), Chapter 12.10 of the City's Municipal Code ("**Chapter 12.10**"), and Section 4.2.3 (Conflict of Interest) of the RFP; and (2) the Declarant Company's consultants and subcontractors retained by Declarant Company (if any) to perform any work under the PDA have or will promptly upon Declarant Company's hiring of those persons, read and abide by Policy, Chapter 12.10, and Section 4.2.3 (Conflict of Interest) of the RFP.

**DECLARATION:**

I, Michael Thompson, on behalf of

The Boring Company, declare that after having made or caused to be made a reasonably diligent investigation both regarding the Declarant Company, the foregoing responses, and the explanation on the attached sheet(s), if any, in response to question 10, are correct to the best of my knowledge and belief. Further, I understand that failure to answer the questions in good faith or providing material false answers may subject the Declarant Company to consequences up to and including disqualification of its Proposal.



Signature of authorized representative

## AD Form F: General Certifications

### Instructions:

Complete this form for the Proposer (executed by the authorized representative of the Proposer).

If the Proposer is a joint venture, consortium, or partnership, then complete a form for each member (executed by the authorized representative).

**PROPOSER:** The Boring Company

The Proposer shall respond either “Yes” or “No” to each of the following where indicated. If the Proposer's response is “No,” a full explanation shall be provided in the space following the last item.

### 1.0 CERTIFICATE OF NONDISCRIMINATION Yes ☒ No ☐

The Proposer certifies: that it does not unlawfully discriminate against any employee or applicant for employment with regard to race, sex, color, religion, ancestry, national origin, marital status, sexual orientation, actual or perceived gender identity, age (over 40), or disability (including AIDS and cancer-related medical condition); that it is in compliance with all applicable federal, state, and local directives and executive orders regarding nondiscrimination in employment; and that it agrees to pursue positively and aggressively the principle of equal opportunity in employment. The Proposer, Major Participants, and any other subcontractors identified in the Proposal shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12900 et seq.) and the applicable regulations promulgated thereunder. The Proposer agrees specifically to adhere to the following:

- a. Establish and observe employment policies that actively promote opportunities for minority persons and women at all job levels.
- b. Communicate this policy to all company employees; outside recruiting services, especially those serving minority communities and women; and minority communities and women at large.
- c. State in all solicitations or advertisements for employees that the Proposer will consider all qualified applicants for employment without regard to race, sex, color, religion, ancestry, national origin, marital status, age (over 40), or disability (including AIDS and cancer-related medical condition).

### 2.0 AFFIRMATIVE ACTION Yes ☒ No ☐

The Proposer certifies that it and those subcontractors with subcontracts in excess of ten thousand dollars (\$10,000) are maintaining Affirmative Action Programs consistent with those required under Federal Executive Order 11246. The detailed requirements are set forth in the Contract Compliance Manual.

### 3.0 WHISTLEBLOWER REQUIREMENTS Yes ☒ No ☐

The Proposer certifies that it will take no action, or adopt any rule, regulation, or policy that is contrary to the provisions set forth in California Labor Code § 1101 et seq.

A full explanation of all “No” answers shall be provided below.

Proposer hereby declares under the penalty of perjury under the laws of the State of California that the certifications made above in No. 1.0–3.0 and the explanation given for any “No” answers are true and correct.

Executed on September 27, 2022 at Los Angeles, California

Michael Thompson, Project Director Name and Title



\_\_\_\_\_  
Signature of authorized representative

# AD Form G: Certification of Prospective Contractor Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion: Primary Covered Transactions

## Instructions:

Complete this form for the Proposer (executed by the authorized representative of the Proposer).

If the Proposer is a joint venture, consortium, or partnership, then complete a form for each member (executed by the authorized representative).

See the instructions for completion in the section below entitled “CONTRACTOR DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION.”

Choose one alternative with an "X" in the box:

☒ The Proposer certifies to the best of its knowledge and belief, that it:

3. Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency
4. Has not within a three-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 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
5. Is 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
6. Has not within a three-year period preceding this Proposal had one or more public transactions (federal, state or local) terminated for cause or default

## OR


☐ The Proposer is unable to certify to all of the statements in this certification and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)

The Proposer 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 Title 31 USC § 3801 are applicable thereto.

PROPOSER: The Boring Company

Executed on October 17, 2022 (Date), at Los Angeles, CA (City, State)

Name of authorized representative: Michael Thompson

Signature of authorized representative: 

Title of authorized representative: Project Director

## **CONTRACTOR DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION**

Pursuant to 2 CFR Part 1200 and 2 CFR Part 180, to confirm the eligibility of the Bidder/Proposer or any covered subcontractor to contract with the City, Bidder/Proposer shall complete and submit with the bid/proposal the certification titled “Certification of Prospective Contractor Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion” and comply with subsection 2 below related to each lower-tier covered transaction.

### **7. Instructions for Bidder/Proposer Certification: Primary Covered Transactions**

In addition to signing and submitting this bid/proposal, the Bidder/Proposer (also referred to as “prospective primary participant”) shall also provide the certification titled “Certification of Prospective Contractor Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion: Primary Covered Transactions.”

The inability of a person to provide the subject certification will not necessarily result in denial of participation in this Contract (also referred to as “primary covered transaction” or “covered transaction” or “PDA”). The Bidder/Proposer shall submit an explanation of why it cannot provide the subject certification. The certification or explanation will be considered in whether or not to enter into this Contract. Failure of the Bidder/Proposer to furnish a certification or an explanation shall disqualify the Bidder/Proposer from participation in this Contract.

This certification is a material representation of fact upon which the City will rely when the City determines whether to enter into the Contract. If it is later determined that the Bidder/Proposer knowingly rendered an erroneous certification, the City may terminate the Contract for cause or default in addition to other remedies available to the City.

The Bidder/Proposer shall provide immediate written notice to the City if at any time the Bidder/Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms “covered transaction” (or as used herein “the Contract” or “PDA”), “debarred,” “suspended,” “ineligible,” “lower-tier covered transaction” (or as used herein “Subcontract,” including a subcontract with a supplier), “participant” (or as used herein “Bidder/Proposer”), “person,” “primary covered transaction” (or as used herein “the Contract,” “PDA,” or “Prime Contract”), “principal,” “bid/proposal” (or as used herein “Bid/Proposal”), and “voluntarily excluded,” as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The Bidder/Proposer may contact the City for assistance in obtaining a copy of those regulations.

The Bidder/Proposer agrees by submitting this bid/proposal that, should the Contract be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4; debarred; suspended; declared ineligible; or voluntarily excluded from participation in this covered transaction, unless authorized by the City.

The Bidder/Proposer further agrees by submitting this bid/proposal that it will include subsection 2 of this section and the certification titled “Certification of Prospective Lower-Tier Participant Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion: Lower-Tier Covered Transactions,” provided by the City in the Bid/Proposal Forms without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.

The Bidder/Proposer may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4; debarred;

suspended; ineligible; or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. The Bidder/Proposer may decide the methods and frequency by which it determines the eligibility of its principals. The Bidder/Proposer may, but is not required to, check the records maintained by the federal System for Award Management (SAM).

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this section. The knowledge and information of the Bidder/Proposer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph F of this subsection, if a Bidder/Proposer knowingly enters into a lower-tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4; suspended; debarred; ineligible; or voluntarily excluded from participation in this transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.

### **Instructions for Prime to Require of Subcontractor Certification: Lower-Tier Covered Transactions**

By signing and submitting its lower-tier bid/proposal, the prospective lower-tier participant shall provide the certification in the Bid/Proposal Form entitled “Certification of Prospective Lower-Tier Participant Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.”

The certification in this subsection is a material representation of fact upon which the City will rely when the City enters into the Contract. If it is later determined that the prospective lower-tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may pursue available remedies, including suspension and/or debarment.

The prospective lower-tier participant shall provide immediate written notice to the Bidder/Proposer if at any time the prospective lower-tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

The terms “covered transaction” (or as used herein “the Contract” or “PDA”), “debarred,” “suspended,” “ineligible,” “lower-tier covered transaction” (or as used herein “Subcontract,” including a subcontract with a Supplier), “participant” (or as used herein “Bidder/Proposer”), “person,” “primary covered transaction” (or as used herein “Contract,” “Prime Contract,” or “PDA”), “principal,” “bid/proposal,” and “voluntarily excluded,” as used in this section, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. The prospective lower-tier participant may contact the Bidder/Proposer for assistance in obtaining a copy of those regulations.

The prospective lower-tier participant agrees by submitting its bid/proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4; debarred; suspended; declared ineligible; or voluntarily excluded from participation in this Contract, unless authorized by the City.

The prospective lower-tier participant further agrees by submitting its bid/proposal that it will include this subsection 2 and the certification titled “Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion: Lower-Tier Covered Transactions,” provided by the City in the Bid/Proposal forms without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart



9.4; debarred; suspended; ineligible; or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the records maintained by the federal SAM.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this section. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph E of this subsection, if a participant in a covered transaction knowingly enters into a lower-tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4; suspended; debarred; ineligible; or voluntarily excluded from participation in this transaction, in addition to other remedies available to the City, the City may pursue available remedies, including suspension and/or debarment.

# **AD Form H: Certification of Prospective Lower-Tier Participant Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion: Lower-Tier Covered Transactions**

## **Instructions:**

Complete this form for each Major Participant or other subcontractor listed in the Proposal that will enter into a subcontract exceeding \$100,000 in value (executed by the authorized representative of the Major Participant or subcontractor).

If the Major Participant or subcontractor is a joint venture, consortium, or partnership, then complete a form for each member (executed by the authorized representative).

See the instructions for completion in the section below entitled “CONTRACTOR DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION.”

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Choose one alternative with an "X" in the box:

- ☐ The prospective lower-tier participant certifies by submission of its lower-tier bid or proposal to the best of its knowledge and belief, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

OR

- ☐ The prospective lower-tier participant is unable to certify that neither it nor its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded and attaches its explanation to this certification.  
The prospective lower-tier participant 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 Title 31 USC § 3801 are applicable thereto.

**PROSPECTIVE LOWER-TIER PARTICIPANT:** \_\_\_\_\_ N/A \_\_\_\_\_

Executed on \_\_\_\_\_ (Date), at \_\_\_\_\_ (City, State)

Name of authorized representative: \_\_\_\_\_

Signature of authorized representative: \_\_\_\_\_

Title of authorized representative: \_\_\_\_\_

# **CONTRACTOR DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION**

## **8. Instructions for Certification: Lower-Tier Covered Transactions**

By signing and submitting its lower-tier bid/proposal, the prospective lower-tier participant shall provide the certification in the Bid/Proposal form entitled “Certification of Prospective Lower-Tier Participant Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion: Lower-Tier Covered Transactions.”

The certification in this subsection is a material representation of fact upon which the City will rely when the City enters into the Contract. If it is later determined that the prospective lower-tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may pursue available remedies, including suspension and/or debarment.

The prospective lower-tier participant shall provide immediate written notice to the Bidder/Proposer if at any time the prospective lower-tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

The terms “covered transaction” (or as used herein “the Contract” or “PDA”), “debarred,” “suspended,” “ineligible,” “lower-tier covered transaction” (or as used herein “Subcontract,” including a subcontract with a Supplier), “participant” (or as used herein “Bidder/Proposer”), “person,” “primary covered transaction” (or as used herein “Contract,” “Prime Contract,” or “PDA”), “principal,” “bid/proposal,” and “voluntarily excluded,” as used in this section, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. The prospective lower-tier participant may contact the Bidder/Proposer for assistance in obtaining a copy of those regulations.

The prospective lower-tier participant agrees by submitting its bid/proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4; debarred; suspended; declared ineligible; or voluntarily excluded from participation in this Contract, unless authorized by the City.

The prospective lower-tier participant further agrees by submitting its bid/proposal that it will include this subsection 1 and the certification (in the Bid/Proposal form) titled “Certification of Prospective Lower-Tier Participant Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion: Lower-Tier Covered Transactions,” without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4; debarred; suspended; ineligible; or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the records maintained by the federal System for Award Management (SAM).

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this section. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph 5 of this subsection, if a participant in a covered transaction knowingly enters into a lower-tier covered transaction with a person who is proposed

for debarment under 48 CFR Part 9, subpart 9.4; suspended; debarred; ineligible; or voluntarily excluded from participation in this transaction, in addition to other remedies available to the City, the City may pursue available remedies, including suspension and/or debarment.

# AD Form I: Non-Collusion Affidavit

## Instructions:

Complete this form for the Proposer (executed by the Proposer's authorized representative) and each Equity Member. If the Proposer or Equity Member is a joint venture, consortium, or partnership, then complete a form for each member (executed by the authorized representative).

## NON-COLLUSION AFFIDAVIT

**PROPOSER:** The Boring Company

**EQUITY MEMBER** (if applicable): \_\_\_\_\_

The undersigned declares:

1. Michael Thompson is the Project Director of the Proposer, the entity making the foregoing Proposal.

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

The Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the PDA or rejection of all proposals and cancellation of this RFP.

Any person executing this declaration on behalf of a firm 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 such firm.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 17, 2022 at Los Angeles, CA

Michael Thompson, Project Director Name and Title



\_\_\_\_\_  
Signature of authorized representative

# AD Form J: Certification of Compliance with Federal Lobbying Requirements (49 CFR Part 20)

## Instructions:

Complete this form for the Proposer (executed by the Proposer's authorized representative).

## CERTIFICATION OF COMPLIANCE WITH FEDERAL LOBBYING REQUIREMENTS (49 CFR PART 20)

The The Boring Company (Proposer) certifies to the best of its knowledge and belief that:


1. No federally 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, an employee of a member of Congress; or any Board member or employee of the City in connection with the awarding of any federal contract; any federally funded contract; or the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, federally funded contract grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts, or influencing or attempting to influence, an officer or employee of any agency; a member of Congress, an officer or employee of Congress, an employee of a member of Congress; or a Board member or employee of the City in connection with this federally funded contract, grant, loan, or cooperative agreement, the undersigned shall register and comply with all federal disclosure requirements.

The undersigned shall require that the language of this certification be included in the solicitation and award documents for all subawards at all tiers including but not limited to subcontracts, subgrants and contracts under grants, loans, and cooperative agreements and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was 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 Title 31 USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any offeror 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 on October 17, 2022 at Los Angeles, California  
(Date) (City) (State)

<u>Michael Thompson</u>		<u>Project Director</u>
Name	Signature of authorized representative	Title

# **AD Form K: Certificate of Compliance with 49 CFR Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations**

## **Instructions:**

Complete this form for the Proposer (executed by the Proposer’s authorized representative).

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## **CERTIFICATE OF COMPLIANCE WITH 49 CFR PART 655, PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT OPERATIONS**

The Proposer hereby certifies that:

### **A. Safety Sensitive Functions Requirement**

(Choose one of the following alternatives by checking the appropriate box)

1. ☒ To the best of my knowledge and belief the work required under the PDA WILL NOT require the performance of “Safety Sensitive Functions” as defined in 49 CFR Part 655.  
OR
2. ☐ To the best of my knowledge and belief the work required under the PDA WILL require the performance of “Safety Sensitive Functions” as defined in 49 CFR Part 655.

If alternative A.1 was chosen, the Proposer shall proceed directly to Section D.

If alternative A.2 was chosen, the Proposer must complete Section B, Parts 1 and 2, and Section C, prior to proceeding to Section D.

### **B. Required Drug and Alcohol Programs**

#### **1. Anti-Drug Use and Alcohol Misuse Program**

(Choose one of the following alternatives by checking the appropriate box)

- a. ☐ The Proposer has established and implemented an anti-drug use and alcohol misuse program meeting the requirements of 49 CFR Part 655.  
OR
- b. ☒ The Proposer will establish and implement an anti-drug use and alcohol misuse program meeting the requirements of 49 CFR Part 655 prior to award of the PDA.

#### **2. Drug and Alcohol Testing Program**

(Choose one of the following alternatives by checking the appropriate box)

- a. ☒ The Proposer has established and implemented a drug and alcohol testing program that complies with 49 CFR Part 655.  
OR
- b. ☐ The Proposer will establish and implement a drug and alcohol testing program that will comply with 49 CFR Part 655 prior to award of the PDA.

### **C. Submittals**


If the Proposer checked the box for Section A.2 above, the Proposer understands and acknowledges that it must submit (1) its anti-drug use and alcohol misuse program and (2) its drug and alcohol testing program to the City for review and approval prior to award of the PDA.

Proposer Initials   TBC  

**D. Signatures**

Proposer Name:           The Boring Company          

Name and Title of authorized representative:           Michael Thompson, Project Director          

Signature of authorized representative: 

Date:           October 17, 2022



## AD Form L: Iran Contracting Certification

### Instructions:

Complete this form for the Proposer (executed by the Proposer's authorized representative) and each Equity Member (executed by their authorized representatives).

### IRAN CONTRACTING CERTIFICATION

Section 2200 et seq. of the California Public Contract Code prohibits a person from submitting a bid for a contract with a public entity for goods and services of \$1,000,000 or more if that person is identified on a list created by the Department of General Services (DGS) pursuant to Section 2203(b) of the California Public Contract Code. The list will include persons providing goods or services of \$20m or more in the energy sector of Iran and financial institutions that extend \$20m or more in credit to a person who will use the credit to provide goods or services in the energy sector in Iran. DGS is required to provide notification to each person that it intends to include on the list at least 90 days before adding the person to the list.


In accordance with Section 2204 of the California Public Contract Code, the undersigned hereby certifies that:

2. It is not identified on a list created pursuant to Section 2203(b) of the California Public Contract Code as a person engaging in investment activities in Iran described in Section 2202.5(a), or as a person described in Section 2202.5(b), as applicable; or
3. It is on such a list but has received permission pursuant to Section 2203(c) or (d) to submit a Proposal to develop a proposed transit connection between the San José Mineta International Airport and Diridon Station in Downtown San José.

Note: Providing a false certification may result in civil penalties and sanctions.

Proposer Name: The Boring Company

Name and Title of authorized representative: Michael Thompson, Project Director

Signature of authorized representative:  \_\_\_\_\_

Date: October 17, 2022

**AD Form M: DBE Affidavit**

**PROPOSER'S DISADVANTAGED BUSINESS ENTERPRISE PROJECT  
GOAL DECLARATION AFFIDAVIT**

Date: 10/13/2022

Name of Proposer: The Boring Company

It is understood and agreed by The Boring Company (the "Proposer") that it has carefully examined all documents that form this Request for Proposal ("RFP") and acknowledges that the City of San José ("City") is considering utilizing federal funds for the San José Airport Connector project ("Project") and, if the City is a recipient of such federal funds, the City may be required to establish a Disadvantaged Business Enterprise ("DBE") goal based on the total project value for the Project. This affidavit further serves to confirm that the Proposer will aggressively exercise good faith efforts to the satisfaction of the City to meet any DBE goal and requirements defined in the contract documents, if and when established.

STATE OF Texas)

COUNTY OF TRAVIS)

Each of the undersigned, being first duly sworn, deposes and says that Arun Prakash  
(Contact Name)

is the CFO of The Boring Company, the entity submitting the Proposal (as defined in the RFP).

The Proposer hereby affirms that if the City is required to establish a DBE goal, it will either meet the DBE goals described in the contract documents or exercise and provide demonstrable evidence to the satisfaction of the City that it has aggressively exercised Good Faith Efforts (as defined in 49 CFR Part 26 and 49 CFR Part 26 Appendix A) to do so in accordance with defined program requirements, including contractual and regulatory provisions set forth under Title 49, Code of Federal Regulations (CFR), Part 26, and subsequently published DBE Federal Regulations.

[Signature]  
(Signature)

\_\_\_\_\_  
(Signature)

ARUN PRAKASH  
(Name Printed)

\_\_\_\_\_  
(Name Printed)

CFO  
(Title)

\_\_\_\_\_  
(Title)

Place of residence (i.e State of California) State of Texas

County of TRAVIS

Subscribed and sworn to (or affirmed) before me on this 13<sup>th</sup> day of October, 2022, by ARUN PRAKASH, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Notary Public Signature Notary Public Seal

*Ann Patricia Mastin*

