**EXHIBIT D**

# Insurance

* 1. **INSURANCE**

DBE shall procure and maintain for the duration of this contract 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 and the results of that work by DBE, his agents, representatives, employees or subcontractors. Agreement will not be considered by FCRTA until all insurance has been obtained that is required under this section and such insurance has been verified by FCRTA, nor shall DBE allow any Subcontractor to commence work on its contract until all similar insurance required of the Subcontractor has been so obtained and approved.

# Minimum Scope and Limits of Insurance

DBE shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

* + - Commercial General Liability Insurance with a minimum limit of Three Million Dollars ($3,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Three Million Dollars ($3,000,000) per project or location. If DBE is a limited liability company, the commercial general liability coverage shall be amended so that DBE and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds. The indemnified parties referenced under "Additional Insured" in Section 3. must also be named as additional insured.
    - Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars ($2,000,000) per accident for bodily injury and property damage. If DBE does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, DBE shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under Subparagraph A. 1) of this Section 3.1.
    - Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars ($1,000,000) per accident for bodily injury or disease. If DBE has no employees while performing services under this Agreement, workers' compensation policy is not required, but DBE shall provide an executed declaration that it has no employees.
    - Professional Liability Insurance [or Errors and Omissions Insurance] with minimum limits of Two Million Dollars ($2,000,000) per claim and in aggregate

# Acceptability of Insurers

The insurance policies required under this Section 3 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Section 3.

# Additional Insured

The commercial general, automobile liability, and professional liability insurance policies shall contain an endorsement naming Monterey-Salinas Transit District, their officers, employees, agents and volunteers (indemnified parties) as additional insureds for all activities arising from this contract.

# Primary and Non-Contributing

The insurance policies required under this Section 3.2 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to FCRTA. Any insurance or self- insurance maintained by FCRTA, its officers, employees, agents or volunteers, shall be in excess of DBE's insurance and shall not contribute with it.

# DBE's Waiver of Subrogation

The insurance policies required under this Section 3 shall not prohibit DBE and DBE's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. DBE hereby waives all rights of subrogation against FCRTA.

# Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be approved by FCRTA. At FCRTA's option, DBE shall either reduce or eliminate the deductibles or self-insured retentions with respect to FCRTA, or DBE shall procure a bond guaranteeing payment of losses and expenses.

# Cancellations or Modifications to Coverage

DBE shall not cancel, reduce or otherwise modify the insurance policies required by this Section 3 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) calendar days' prior written notice to FCRTA. If any insurance policy required under this Section 3 is canceled or reduced in coverage or limits, DBE shall, within two (2) business days of notice from the insurer, phone, fax or notify FCRTA via certified mail, return receipt requested, of the cancellation of or changes to the policy.

# FCRTA Remedy for Noncompliance

If DBE does not maintain the policies of insurance required under this Section 3 in full force and effect during the term of this Agreement, or in the event any of DBE's policies do not comply with the requirements under this Section 3, FCRTA may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, FCRTA may, but has no duty to, take out the necessary insurance and pay, at DBE's expense, the premium thereon. DBE shall promptly reimburse FCRTA for any premium paid by FCRTA or FCRTA may withhold amounts sufficient to pay the premiums from payments due to DBE.

# Evidence of Insurance

A minimum of ten (10) calendar days prior to FCRTA’s consideration of award of the contract, DBE shall furnish a certificate of insurance and all original endorsements evidencing and effecting the coverages required under this Section 3 for review by FCRTA's Operations Manager. The certificate of insurance and all original endorsements evidencing and effecting the coverages required under this Section 3 must receive approval from FCRTA's Risk Manager a minimum of five (5) calendar days prior to FCRTA’s consideration of award of the contract. The endorsements are subject to FCRTA's approval. DBE may provide complete, certified copies of all required insurance policies to FCRTA. DBE shall maintain current endorsements on file with FCRTA's Operations Manager. DBE shall provide proof to FCRTA's Operations Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. DBE shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

# Indemnity Requirements not Limiting

Procurement of insurance by DBE shall not be construed as a limitation of DBE's liability or as full performance of DBE's duty to indemnify FCRTA under Section 3 of this Agreement.

# Subcontractor Insurance Requirements

DBE shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 3.

# BUILDER'S RISK INSURANCE

Within ten (10) calendar days following FCRTA’s award of the Design-Build Agreement for South County Operations and Maintenance Facility Project, DBE must provide adequate/sufficient Builder's Risk Insurance to protect the indemnified parties referenced under "Additional Insured" in Section 3.1 from a catastrophic event should one occur. DBE's policy must be submitted to FCRTA for review and must be deemed acceptable by FCRTA. FCRTA reserves the right to require modifications should they be necessary to provide the protection being requested by FCRTA.