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APPENDIX A
OPINION OF THE U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT, FILED AUGUST 1, 2023
NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROMAN MELIKOV, Plaintiff-Appellant, v. GHILOTTI BROS., INC., Defendant-Appellee.	No. 22-15901 D.C. No. 4:21-cv-04074-JSW MEMORANDUM* (Filed Aug. 1, 2023)
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Appeal from the United States District Court
for the Northern District of California
Jeffrey S. White, District Judge, Presiding

Submitted July 27, 2023**

Before: OWENS, LEE, and BUMATAY, Circuit Judges.

Roman Melikov, appearing *pro se*, appeals the district court's grant of summary adjudication in favor of Ghilotti Bros., Inc. ("Ghilotti") on Melikov's willful and wanton misconduct claim. We have jurisdiction under 28 U.S.C. § 1291. Reviewing de novo, *see Amdahl Corp.*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2).*

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v. Profit Freight Sys., Inc., 65 F.3d 144, 146 (9th Cir. 1995), we affirm.

Melikov contends that his claims pose a federal question and that federal safety standards should govern the analysis. He is mistaken. The Federal-Aid Highway Act (“FHWA”) and Highway Safety Act (“HSA”) do not contain express or implied causes of action and thus do not confer federal question jurisdiction. *See Alexander v. Sandoval*, 532 U.S. 275, 286 (requiring Congressional intent to create a private cause of action); *see also Merrell Dow Pharmaceuticals Inc. v. Thompson*, 429 U.S. 804, 817 (1996) (stating that cases brought under federal question jurisdiction are generally those in which federal law creates the cause of action). Ghilotti’s federally funded contract with Caltrans also does not confer federal question jurisdiction because the contract does not implicate a federal cause of action for willful and wanton misconduct. *See Merrell Dow*, 429 U.S. at 817. And the district court did not “synthetically create” a federal question, as Melikov asserts, because it relied on only state law to assess Melikov’s claims.

Moreover, none of the federal laws or safety standards that Melikov cites preempts state law. Torts are governed by state law. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 483–84 (1981) (acknowledging that federal courts follow state laws for personal injury and tort cases). The FHWA, HSA, and Manual on Uniform Traffic Control Devices do not conflict with nor preempt the state standard for willful and wanton misconduct. Melikov’s reliance on *Norfolk S. Ry. Co. v.*

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Shanklin, 529 U.S. 344 (2000), to support preemption is misplaced. That case concerned federal regulations that preempted state standards governing the adequacy of railroad safety devices—not torts. *See id.* at 358.

With diversity jurisdiction over Melikov’s claims only, California law applies. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938); *Mobil Oil Corp.*, 453 U.S. at 483. Under California law, willful and wanton misconduct requires: “(1) actual or constructive knowledge of the peril to be apprehended; (2) actual or constructive knowledge that injury is probable, as opposed to possible, result of the danger; and (3) conscious failure to act to avoid the peril.” *Doe v. U.S. Youth Soccer Ass’n*. 8 Cal. App. 5th 1118, 1140 (2017) (simplified). Here, there is no evidence that Ghilotti had actual or constructive knowledge of the harm that Melikov would face. Nor did Ghilotti act with the “conscious failure” to prevent harm that is necessary to substantiate Melikov’s claim.

Because California law governs Melikov’s claim, and because there is no genuine dispute that Ghilotti did not act with active disregard of the consequences of its conduct, we affirm.

AFFIRMED.

APPENDIX B

**JUDGMENT OF THE U.S. DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA,**

FILED MAY 16, 2022

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ROMAN MELIKOV,

Plaintiff,

v.

GHILOTTI BROS., INC.,

Defendant.

Case No. 21-cv-04074-JSW

**ORDER GRANTING
MOTION FOR SUM-
MARY ADJUDICATION,
REQUIRING STATUS
REPORT, AND CON-
TINUING TRIAL AND
PRETRIAL DEADLINES**

Re: Dkt. No. 25

(Filed May 16, 2022)

Now before the Court for consideration is the motion for summary adjudication filed by Defendant Ghilotti Brothers, Inc. (“Defendant”). The Court has considered the parties’ papers, relevant legal authority, and the record in the case, and it finds this matter suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). For the following reasons, the Court GRANTS Defendant’s motion.

BACKGROUND

The lawsuit arises out of an automobile accident that occurred on July 16, 2019 in Golden Gate Park in

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San Francisco, CA. (Compl. ¶ 3.) The accident occurred near the intersection of Crossover Drive and Park Presidio Bypass in San Francisco. South of the intersection, Crossover Drive consists of three northbound travel lanes. (Dkt. No. 25-1, Declaration of Tina Yim (“Yim Decl.”) ¶ 8, Ex. F (“Manjarrez Report”) at 1.) The leftmost lane is a left-turn only lane marked with left turn arrows; motorists in this lane must turn left at the intersection of Crossover Drive and Park Presidio Bypass to continue on Crossover Drive. (Manjarrez Report at 1.) Motorists in the center lane and the right lane travel straight through the intersection. (*Id.* at 2.) Motorists in the center lane and right lane continue in those lanes north of the intersection. (*Id.*) North of the intersection, Park Presidio Bypass consists of three northbound travel lanes. (*Id.*) The leftmost lane of Park Presidio Bypass is added north of the intersection. (*Id.*) That is, there is no northbound left lane available for motorists as they pass through the intersection. (*Id.*) The left lane of Crossover Drive that exists south of the intersection becomes a left-turn only lane, and the leftmost lane of Park Presidio Bypass is added north of the intersection. (*Id.*)

At the time of the accident, the leftmost lane of Park Presidio Bypass north of the intersection was closed to traffic; the center lane and the right lane remained open. (*Id.*) Defendant placed a “CENTER LANE CLOSED AHEAD” sign approximately 790 feet prior to the lane closure. (*Id.* at 3.) There was also a temporary barrier, crash cushion, and “LANE CLOSED” sign in the intersection prior to the point at which the

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leftmost lane of Park Presidio Bypass is added. (*Id.* at 2.)

Plaintiff Roman Melikov (“Plaintiff”) alleges that as he drove north through Golden Gate Park, he encountered the “CENTER LANE CLOSED AHEAD” sign. (Compl. ¶ 3.) To avoid what he expected would be a center lane closure, Plaintiff moved into the left lane. (*Id.* ¶ 4.) However, he discovered concrete barriers were blocking the left lane not the center lane. (*Id.* ¶ 6.) To avoid a collision with the concrete barrier in the left lane, Plaintiff veered to the right and became lodged between another vehicle and the concrete barrier, which caused damage to his vehicle. (*Id.* ¶¶ 7-8.)

Plaintiff, proceeding *pro se*, filed this lawsuit on May 27, 2021. Plaintiff alleges that Defendant was responsible for the signage and placement of the barriers that led to his accident. (*Id.* ¶ 11.) Plaintiff alleges that Defendant failed to exercise the proper standard of care when it placed the incorrect traffic sign on Cross-over Drive and failed to post adequate signage warning motorists of the lane closure. (*Id.* ¶¶ 17-19.) Plaintiff brings causes of action for negligence and willful and wanton misconduct and seeks punitive damages in connection with his claim of willful and wanton misconduct. Defendant seeks summary adjudication of the cause of action for willful and wanton misconduct and the request for punitive damages.

ANALYSIS

A. Applicable Legal Standard.

A motion for summary adjudication, sometimes referred to as a motion for partial summary judgment, is governed by the same standard as a typical motion for summary judgment. *California v. Campbell*, 138 F.3d 772, 780-81 (9th Cir.1998); *Costa v. Nat'l Action Fin. Servs.*, No. CIV S-05-2084 FCD/KJM, 2007 WL 4526510, at *2 (E.D. Cal. Dec. 19, 2007). “A party may move for summary judgment, identifying each claim or defense . . . on which summary judgment is sought.” Fed. R. Civ. P. 56(a). A principal purpose of the summary judgment procedure is to identify and dispose of factually unsupported claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Summary judgment, or partial summary judgment, is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “In considering a motion for summary judgment, the court may not weigh the evidence or make credibility determinations, and is required to draw all inferences in a light most favorable to the non-moving party.” *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir. 1997), *abrogated on other grounds by Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th Cir. 2008).

The party moving for summary judgment bears the initial burden of identifying those portions of the pleadings, discovery, and affidavits that demonstrate the absence of a genuine issue of material fact. *Celotex*,

477 U.S. at 323; *see also* Fed. R. Civ. P. 56(c). An issue of fact is “genuine” only if there is sufficient evidence for a reasonable fact finder to find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). A fact is “material” if it may affect the outcome of the case. *Id.* at 248. Once the moving party meets its initial burden, the non-moving party must “identify with reasonable particularity the evidence that precludes summary judgment.” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996) (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir. 1995)); *see also* Fed. R. Civ. P. 56(c)(3) (“The court need consider only the cited materials, but it may consider other materials in the record.”). If the non-moving party fails to point to evidence precluding summary judgment, the moving party is entitled to judgment as a matter of law. *Celotex*, 477 U.S. at 323.

B. California Law Governs.

In cases where a federal court exercises diversity jurisdiction, the court must apply the substantive law of the state in which they are located except on matters governed by the U.S. Constitution or federal statutes. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). The basis for jurisdiction here is diversity between the parties. (*See* Compl. ¶ 12.) Personal injury and tort cases are guided by the laws of the forum state. *Gulf Offshore Co., Div. of Pool Co. v. Mobil Oil Corp.*, 453 U.S. 473, 483 (1981) (acknowledging federal courts follow state laws for personal injury and tort cases). This case, which arises out of an accident that occurred in California,

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involves property injury and tort law. California law governs Plaintiff's claims.

Plaintiff attempts to invoke federal question jurisdiction in his opposition to summary judgment based on the Federal Highway Act and Highway Safety Act. *See* 23 U.S.C. § 101 *et seq.*; *id.* §§ 401 *et seq.* Federal question jurisdiction exists when a plaintiff's well-pleaded complaint establishes either (1) that federal law creates the cause of action or (2) that a state law claim necessarily raises a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally-approved balance of federal and state judicial responsibilities. *Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005). Neither the Federal Highway Act nor the Highway Safety Act create a private cause of action for Plaintiff's claims. *See Ramos Pinero v. Puerto Rico*, 359 F. Supp. 2d 56, 57 (D.P.R. 2005), *aff'd*, 453 F.3d 48 (1st Cir. 2006); *Whittington v. City of Bangor*, No. 1:17-cv-00413-NT, 2017 WL 5037457, at *3 (D. Me. Nov. 3, 2017), *report and recommendation adopted*, No. 1:17-cv-413-NT, 2017 WL 6210894 (D. Me. Dec. 8, 2017). Nor does Defendant's contract with Caltrans provide a basis for federal question jurisdiction in this case. *Merrell Dow Pharm Inc. v. Thompson*, 478 U.S. 804, 808, 817 (1986) (noting that the mere presence of a federal issue in a state cause of action does not confer federal question jurisdiction).

Plaintiff's complaint involves claims of negligence based on an accident that occurred in California. There

is nothing in the complaint that indicates Plaintiff's claims raise a question of federal law that would confer federal question jurisdiction. This case is here pursuant to diversity jurisdiction, and California state law applies to Plaintiff's claims.¹

C. The Court Grants Defendant's Motion as to the Claim of Willful or Wanton Misconduct.

“Under California law, ‘willful or wanton misconduct is separate and distinct from negligence. . . . Unlike negligence, which implies a failure to use ordinary care, and even gross negligence, which connotes such a lack of care as may be presumed to indicate a passive and indifferent attitude toward results, willful misconduct is not marked by a mere absence of care. Rather, it involves a more positive intent actually to harm another or to do an act with a positive, active and absolute disregard of its consequences.’” *Dazo v. Globe Airport Sec. Servs.*, 295 F.3d 934, 941 (9th Cir. 2002) (quoting *Calvillo-Silva v. Home Grocery*, 19 Cal.4th 714, 729 (1998)). Three elements are necessary to raise a negligent act to the level of willful misconduct: (1) actual or constructive knowledge of the peril to be apprehended, (2) actual or constructive knowledge that injury is a probable as opposed to a possible result of the danger, and (3) a conscious failure to act to avert

¹ Plaintiff also attempts to argue that his state law causes of action are preempted by federal regulations. But Plaintiff fails to show how the implementation of state law in this case conflicts with a federal law.

that peril.” *Wolk v. Green*, 516 F. Supp. 2d 1121, 1131 (N.D. Cal. 2007) (internal citation omitted).

Here, Plaintiff has not offered evidence of Defendant’s positive intent to harm or to commit an act with an active disregard of its consequences. The evidence shows that the “CENTER LANE CLOSED AHEAD” sign was “used in a manner that inconsistent with its intended purpose” because the construction work on Park Presidio Bypass occupied the left lane not the center lane. (Manjarrez Report at 3.) However, this does not establish Defendant’s positive intent to cause harm. Indeed, the evidence also shows that Defendant used the “CENTER LANE CLOSED AHEAD” sign at the direction of Caltrans. (Yim Decl., Ex. G at 1.) Thus, the fact that signage was not properly posted in and of itself does not rise to the level of willful or wanton misconduct.

Plaintiff also has not offered evidence to establish that Defendant consciously failed to act avoid the danger. The evidence shows that in addition to the improper center lane sign, Defendant utilized a temporary barrier, crash cushion, and “LANE CLOSED” sign to alert motorists of the lane closure. Plaintiff relies on his expert report to argue that Defendant knew or should have known that posting the improper sign and failing to post additional signage would lead to unsafe conditions for motorists. However, Defendant’s improper and potentially inadequate use of signage, at most, would amount to negligence.

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Plaintiff also argues that a series of negligent acts or omissions may constitute recklessness or willful misconduct. However, the evidence does not show a series of negligent acts on the part of Defendant. Apart from the signage issue, the other conduct that led to the accident was Plaintiff's own failure to comply with clearly marked traffic lanes and signals at the intersection of Crossover Drive and Park Presidio Bypass.

Plaintiff offers no evidence of Defendant's intent to use the wrong signage with the knowledge that it would lead to unsafe conditions. The Court concludes that no reasonable jury could conclude that Defendant's conduct rises to the level of willful and wanton misconduct as a matter of law. The Court GRANTS Defendant's motion on this basis.

D. Plaintiff's Claim for Punitive Damages Fails.

California Civil Code section 3294(a) permits an award of punitive damages "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." Cal. Civ. Code § 3294(a). Section 3294 defines "malice" as "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." *Id.* § 3294(c)(1). "Despicable conduct" is conduct "so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by most ordinary decent people." *Pac. Gas & Elec. Co. v. Super. Ct.*, 24

Cal.App.5th 1150, 1159 (2018) (internal quotation marks and citation omitted). “Conscious disregard” requires that the defendant “have *actual knowledge* of the risk of harm it is creating and, in the face of that knowledge, fail to take steps it knows will reduce or eliminate the risk of harm.” *Id.* (internal quotation marks and citation omitted). Whether a “defendant is aware of the probable dangerous consequences of [its] conduct and [it] willfully fails to avoid such consequences” can be “proved either expressly through direct evidence or by implication through indirect evidence from which the jury draws inferences.” *Pfeifer v. John Crane, Inc.*, 220 Cal.App.4th 1270, 1299 (2013) (quoting *Angie M. v. Superior Ct.*, 37 Cal.App.4th 1217, 1228 (1995)). “Summary judgment on the issue of punitive damages is proper only when no reasonable jury could find the plaintiff’s evidence to be clear and convincing proof of malice, fraud or oppression.” *Johnson & Johnson v. Superior Court*, 192 Cal.App.4th 757, 762 (2011) (internal quotation marks omitted).

Here, the Court has found that there is no issue of fact on the cause of action for willful and wanton misconduct, which is the sole claim upon which Plaintiff bases his request for punitive damages. (*See* Compl. ¶¶ 33-34.) Therefore, Plaintiff’s claim for punitive damages also fails.

Even if that were not the case, there is no evidence to support an award of punitive damages. Plaintiff has not offered any evidence, much less clear and convincing evidence, of conduct which is despicable or malicious. As discussed above, the evidence shows that

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Defendant's posted signage did not comply with the relevant regulations. However, the evidence also shows that Caltrans directed Defendant to post the sign. Thus, the use of the improper signage under these circumstances does not constitute despicable conduct or a conscious disregard for the safety of others. Plaintiff fails to demonstrate there is clear and convincing evidence that Defendant acted with the requisite malice for punitive damages.

Plaintiff appears to argue that he is entitled to punitive damages under federal law. However, as discussed above, this case alleges state law claims; there is no alleged violation of rights under federal law. Regardless, the evidence does not support an award of punitive damages even under Plaintiff's proposed standard.

The Court GRANTS Defendant's motion on this basis.

CONCLUSION

For the foregoing reasons, the Court GRANTS Defendant's motion for summary adjudication as to Plaintiff's claim for willful and wanton misconduct and his request for punitive damages.

The parties shall meet and confer and update the Court by joint case status report by no later than June 17, 2022 of their intended course of action for the remainder of this matter and the status of alternative

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dispute resolution.² The Court encourages the parties to seek resolution of this matter. If requested, the Court will refer the parties to Court-sponsored alternative dispute resolution.

The Court CONTINUES the pretrial conference to September 26, 2022, at 2 p.m. The Court CONTINUES jury selection to October 12, 2022, at 8 a.m. and trial to October 17, 2022, at 8 a.m.

IT IS SO ORDERED.

Dated: May 16, 2022

/s/ Jeffrey S. White
JEFFREY S. WHITE
United States District Judge

² The parties' deadline to participate in ADR was April 1, 2022.

APPENDIX C

ORDER OF THE U.S. COURT OF APPEALS FOR
THE NINTH CIRCUIT DENYING PETITION FOR
PANEL REHEARING
FILED AUGUST 15, 2023
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROMAN MELIKOV, Plaintiff-Appellant, v. GHIOTTI BROS., INC., Defendant-Appellee.	No. 22-15901 D.C. No. 4:21-cv-04074-JSW Northern District of California, Oakland ORDER (Filed Aug. 15, 2023)
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Before: OWENS, LEE, and BUMATAY, Circuit Judges.

The panel voted to deny the petition for panel re-hearing. Fed. R. App. P. 40. The petition (Dkt. No. 24) is therefore **DENIED**.

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APPENDIX D

**KEY EXCERPTS FROM GHILOTTI BROS., INC.'S
FEDERALLY FUNDED, 04-4K1104, CONTRACT
WITH CALTRANS**

[LOGO]

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

EXECUTION

OF

CONTRACT

**FOR CONSTRUCTION ON
STATE HIGHWAY**

IN

**THE CITY AND COUNTY OF SAN FRANCISCO FROM
SAN MATEO COUNTY LINE TO
HOLLOWAY AVENUE AND FROM LINCOLN WAY
TO RUCKMAN AVENUE UNDERCROSSING**

DISTRICT 04 ROUTE 1

For use in Connection with Standard Specifications
Dated 2015, Standard Plans Dated 2015, and Labor
Surcharge and Equipment Rental Rates.

Contract No. 04-4K1104

04-SF-1-R0.0/0.9, 4.016.9

ACSB1NH-P001(654)E

GHILOTTI BROS., INC

Bids Open:
February 15, 2019

BIDDERS PLEASE NOTE
Bid Summaries available at:
<http://www.dot.ca.gov/hq/esc/oe/>

Please return Contracts
Within 10 Days to:
Department of
Transportation
Attn: Office Engineer MS 43
1727 30th Street
Sacramento CA 95816

State of California

DEPARTMENT OF TRANSPORTATION

TO: District Director – 04 File: 04-SF-1-R0.0/0.9, 4.0/6.9

Attention: Construction 04-4K1104

Bids Opened: 2/15/19

FROM: Department of Transportation

SUBJECT: Rehabilitate roadway and replace signals.

Contract number 04-4K1104 was awarded on 3/14/2019
to:

GHILOTTI BROS., INC.
SAN RAFAEL CA 94901
(415) 454-7011

Please advise the Contractor of this award prior to
close of business today.

Office Engineer
Contract Awards
(916) 227-6299

STATE OF CALIFORNIA – CALIFORNIA
STATE TRANSPORTATION AGENCY

GAVIN NEWSOM,
Governor

**DEPARTMENT OF
TRANSPORTATION**

[SEAL]

DIVISION OF ENGINEERING SERVICES *Making Conservation
a California Way of Life.*

OFFICE ENGINEER

1727 30th Street, MS-43

SACRAMENTO, CA 95816-8041

PHONE (916) 227-6299

FAX (916) 227-6282

www.dot.ca.gov/hq/esc/oe

GHILOTTI BROS., INC. 04-4K1104
525 JACOBY STREET 04-SF-1-R0.0/0.9, 4.0/6.9
SAN RAFAEL CA, 94901 ACSB1NH-P001(654)E
B.O. 2/15/2019

Dear Contractor:

Your bid proposal for the above noted contract in the amount of \$14,913,676.00 was found to be acceptable and the contract has been awarded to you as indicated below by the Director of Transportation.

The description of the work and location are as follows:

REHABILITATE ROADWAY AND REPLACE SIGNALS. IN THE CITY AND COUNTY OF SAN FRANCISCO FROM SAN MATEO COUNTY LINE TO HOLLOWAY AVENUE AND FROM LINCOLN WAY TO RUCKMAN AVENUE UNDERCROSSING

A(n) 16 percent DBE goal was set for this project. Your firm was certified to achieve 16.5 percent DBE Participation.

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If you have received this document by facsimile transmittal, the original document will be arriving in the mail along with forms and instructions to execute this contract. Please follow the instructions carefully. If you have questions relative to the execution of the contract, you may call our Contract Awards Section at (916) 227-6299.

A copy of the Engineer's Estimate (bid item) and a listing of Subcontractors from your proposal are attached for your records.

Attachment(s)

Sincerely,

SHIRA RAJENDRA
Deputy Division Chief
Office Engineer

By: /s/ Shira Rajendra
Date: 3/4/9

*"Provide a safe, sustainable, integrated and
efficient transportation system to enhance
California's economy and livability"*

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STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
DBE CONFIRMATION
DES-OE-0102.13 (NEW 05/2015)

Contact No:

04-4K1104

Name of DBE business:

Dirt and Aggregate Interchange, Inc.

Name of DEB representative:

Henry H. Pelfrey

DBE certification number:

20

Name of bidder:

Ghilotti Bros., Inc.

Name of prime contractor if different from the bidder:

Name of representative of bidder or prime contractor:

Ryan Strong

Date:

bid date: 2-15-19

Bid Item number	Item of work and description of services to be subcontracted or materials to be provided ¹	Amount (\$)
13, 60, 61, 62,	MBGR work	175,900.00
64, 77, 83		

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<p>¹ If 100% of an item is not to be performed or furnished by the DBE, describe the exact portion of this item to be performed or furnished</p>	<p>Total</p>	<p>\$175,900.00</p>
	<p>As an authorized representative of a certified disadvantaged business enterprise, I confirm that my business was contacted by the bidder or prime contractor shown above regarding the contract shown above. If the bidder is awarded the contract, my business will enter into a contractual agreement with the bidder or prime contractor to perform the type and dollar amount of work shown on the DBE Commitment form.</p> <p>I certify under penalty of perjury that the foregoing is true and correct.</p> <p><u>Henry H. Pelfrey</u> Signature of DBE's authorized representative:</p> <p><u>Henry H. Pelfrey</u> Printed name of DBE's authorized representative:</p> <p><u>President</u> Title of DBE's authorized representative:</p>	

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	<u>2/18/19</u> Date:
ADA Notice	For individuals with sensory disabilities, this document is available in alternate formats. For alternate format information, contact the Forms Management Unit at (915) 445-133, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-68, Sacramento, CA 90814

—
FEB-14-2019 16:

QUOTATION

[LOGO]
DIRT & AGGREGATE
INTERCHANGE, INC.

DBE sub to GBI
Bid Items <u>13, 60, 61, 62, 64</u> all
<u>100% 77 PARTIAL, 83 PARTIAL</u>
Supplier: \$ <u> X </u> x60%=\$ <u> X </u>
Truck <u> X </u> Hrs @\$ <u> X </u> =\$ <u> X </u>
Total DBE \$ <u>175,900</u>

DATE: 2/14/2019

TO: GHILOTTI BROS., INC. Attn: ESTIMATOR
FAX: 45-454-6376

Project Name: 04-4K1104 REHABILITATE
ROADWAY

Owner: CALTRANS

Bid Date & Time: 2/15/19 2:00PM

<u>Item</u>	<u>Description</u>	<u>Qty</u>	<u>U/M</u>	<u>Unit Price</u>	<u>Extended</u>
✓ 13	Treated Wood Waste	11200	LBS	\$0.40	\$4,480.00
✓ 60	Midwest Guardrail System (Wood Post)	240	LF	\$35.00	\$8,400.00
✓ 61	Transition Railing (Type WB-31)	5	EA	\$8,275.00	\$37,650.00
[No #81] ✓ 62	Alternative In Line Terminal System	5	EA	\$4,134.00	\$20,570.00
✓ 64	Remove Guardrail	520	LF	\$7.00	\$3,640.00
77	Crash Cushion (Type SCI-100GM)	2	EA	\$45,530.00	\$91,060.00
83	Mobilization	1	LS	\$5,000.00	\$5,000.00
					[+5,000]
				TOTAL:	\$170,900.00
					\$175,900.

→ [Yes - List]

Stipulations

- Price based on 1 mobilization to project.
- Extra mobilization = \$5,000.00 per mobilization.
- 10 WORKING DAYS.
- D&A MUST HAVE CLEAR & UNOBSTRUCTED WORK ZONE - (14' Wide Minimum Lane)
- Prime Contractor to supply staging area for storage of guardrail materials.
- BOND NOT INCLUDED
- NO TRAFFIC CONTROL, EXCLUDES ANY BETING, REMOVING OR MOVING OF TEMP. BARRIER (K-RAIL).
- NO SURVEY WORK. NO ENGINEERING OR TESTING.
- Excludes all dirt work and concrete work on guardrail items.
- Excludes erosion control.
- Excludes any and all As-Built Drawings.
- CA Contractor # 507828
- CA DBE # CT-000020
- CA DIR# 1000010905

Due to continued and unpredictable increases in material costs and resulting delays in delivery of such materials, the prices and delivery dates quoted herein will automatically expire thirty (30) days from the above date, unless accepted in writing prior to that date.

Thank you for your consideration.

DIRT and AGGREGATE INTERCHANGE, INC.

Signed: William Smith

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We are a Minority Business Enterprise
OR DBE #403, OR CCB# 26599, WA CCB#
DIRTAII192NP, WA DBEX# DA M0700 781
20905 NE Sandy Blvd, Fairview, OR 97024
Phone: 503-661-5083 Fax: 503-669-1192
