



METROPOLITAN
TRANSPORTATION
COMMISSION

Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA 94105
415.778.6700
www.mtc.ca.gov

March 29, 2017

REQUEST FOR QUALIFICATIONS (RFQ)

Caltrans Regional Planning Grant: A Resilient Transportation System for Safe and Sustainable Communities

NOTICE IS HEREBY GIVEN that the Metropolitan Transportation Commission (MTC) in cooperation with the Bay Area Regional Collaborative (BARC), Caltrans District 4, and the Bay Conservation Development Commission (BCDC), the Project Management Team, herein referred to as the "PMT", invites your firm to submit a Statement of Qualification (SOQ) for the Caltrans Regional Planning Grant: A Resilient Transportation System for Safe and Sustainable Communities. This is a grant awarded by Caltrans to MTC to accomplish a regional vulnerability assessment of the Bay Area transportation system, priority development areas, priority conservation areas and disadvantaged and vulnerable communities, as well as framework for a regional adaptation plan. Through this Request for Qualifications (RFQ), MTC will select one or more qualified consultants ("Consultant Bench") with which MTC may contract to provide services related to this project on an as-needed basis. .

The RFQ documents for this project are available for download on the MTC website at <https://mtc.bonfirehub.com>. Proposers are responsible for checking the website for any Addenda to this RFQ. Responses should be submitted in accordance with the instructions set forth in the RFQ.

Interested firms must submit their SOQ by **4:00 p.m. on Monday, May 1, 2017**, in accordance with the instructions contained in the RFQ. Other key RFQ dates are listed in Section V, Consultant Selection Timetable of the RFQ.

Any contract entered into as a result of this RFQ will be funded, in whole or in part, with federal funds from Federal Transit Administration (FTA) 5304. Accordingly, the requirements included in Attachment H, Federally Required Clauses of Appendix D, MTC Standard Consultant Contract, and Appendices F through F-5 to this RFQ shall apply to this procurement.

MTC Point of Contact: Michael Brinton, Contracts Specialist
Metropolitan Transportation Commission - Bay Area Metro Center
375 Beale Street, 7th Floor Receptionist
San Francisco, CA 94105
E-mail: mbrinton@mtc.ca.gov

Thank you for your interest.

Sincerely,

DocuSigned by:

Steve Heminger

Steve Heminger, Executive Director

SH: AB, MB

Jake Mackenzie, Chair
Sonoma County and Cities

Scott Haggerty, Vice Chair
Alameda County

Alicia C. Aguirre
Cities of San Mateo County

Tom Azumbrado
U.S. Department of Housing
and Urban Development

Jeannie Bruins
Cities of Santa Clara County

Damon Connolly
Marin County and Cities

Dave Cortese
Santa Clara County

Carol Dutra-Vernaci
Cities of Alameda County

Dorene M. Giacomini
U.S. Department of Transportation

Federal D. Glover
Contra Costa County

Anne W. Halsted
San Francisco Bay Conservation
and Development Commission

Nick Josefowitz
San Francisco Mayor's Appointee

Jane Kim
City and County of San Francisco

Sam Liccardo
San Jose Mayor's Appointee

Alfredo Pedroza
Napa County and Cities

Julie Pierce
Association of Bay Area Governments

Bijan Sartipi
California State
Transportation Agency

Libby Schaaf
Oakland Mayor's Appointee

Warren Slocum
San Mateo County

James P. Spering
Solano County and Cities

Amy R. Worth
Cities of Contra Costa County

Steve Heminger
Executive Director

Alix Bockelman
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

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I. MTC AND PROJECT DESCRIPTION

A. Description of MTC, BCDC, BARC and Caltrans District 4

MTC was created by the state Legislature in 1970 (California Government Code § 66500 *et seq.*) to serve as the Metropolitan Planning Organization (MPO) for the nine-county San Francisco Bay Area responsible for regional transportation planning, coordination and financing. As part of its responsibilities, MTC crafts the long-range Plan Bay Area and other targeted plans, and champions the projects and initiatives aimed at fulfilling these visions. The agency establishes regional funding priorities and allocates approximately \$1.5 billion annually to public transit, highways, local streets and roads, freight facilities, bicycle and pedestrian routes as well as investment strategies related to affordable housing. MTC spearheads and manages regional programs such as Clipper transit fare card and forges the institutional ties needed to improve the efficiency of the transportation network.

The San Francisco Bay Conservation and Development Commission (BCDC) is an agency of the State of California, housed in the Natural Resources Agency. BCDC was created by the State legislature in 1965 to serve as a planning and regulatory body to manage the San Francisco Bay's long-term health in light of shrinking and contamination from unregulated filling. The Commission maintains the San Francisco Bay Plan and issues or denies permits for development, filling and dredging within its designated regional authority. Additionally, BCDC's activities have expanded to include facilitating the creation of regional strategies to address the impacts of the rising sea level from climate change, including leading the nationally- recognized climate adaptation planning effort, the Adapting to Rising Tides Program.

The Bay Area Regional Collaborative (BARC) is a consortium of member agencies that come together to address crosscutting issues of regional significance, with the ultimate goal of improving the quality of life for all Bay Area residents. The member agencies include the Association of Bay Area Governments (ABAG), the Bay Area Air Quality Management District (BAAQMD), BCDC and MTC. The agencies are working together to create coordinated policies, increase efficiencies, leverage resources, and provide better services to local governments and special districts that are grappling with climate mitigation and climate adaptation issues. The BARC is made up of a Governing Board of member agency commission/board representatives, an Executive Directors Group, and other staff cross-agency work teams.

Caltrans District 4 serves Sonoma, Napa, Solano, Marin, San Francisco, Contra Costa, Alameda, San Mateo and Santa Clara counties. Caltrans manages more than 50,000 miles of California's highway and freeway lanes, provides inter-city rail services, permits more than 400 public-use airports and special-use hospital heliports, and works with local agencies. Caltrans carries out its mission of providing a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability, with six primary programs: Aeronautics, Highway Transportation, Mass Transportation, Transportation Planning, Administration and the Equipment Service Center.

The Project Management Team (PMT) will include staff from MTC (including BARC staff), BCDC and Caltrans District 4. The BARC Executive Director will serve as the project manager.

Key Stakeholders**Local & Regional**

- Association of Bay Area Governments (ABAG)
- Bay Trail
- Local jurisdictions, including cities, counties, relevant departments, and agencies, including flood managers, congestion management authorities, planning, emergency services, public works, etc.
- Nonprofit and community-based organizations representing issues such as social equity, environment health and justice, community development and economic access
- Philanthropy, including the San Francisco Foundation
- Private and non-profit developers
- Transit agencies such as Bay Area Rapid Transit District (BART), Capitol Corridor Joint Powers Authority, Santa Clara County Transportation Authority (VTA), San Mateo County Transportation Authority (SamTrans), San Francisco Municipal Transportation Authority (SFMTA), etc.

State

- California Coastal Conservancy
- Governor's Office of Planning and Research (OPR)
- California Natural Resources Agency

Federal

- Federal Emergency Management Agency (FEMA)
- National Oceanographic Atmospheric Administration (NOAA)
- United States Environmental Protection Agency

B. Project Description**General Objectives**

A primary objective of *A Resilient Transportation System for Safe and Sustainable Communities* is for the PMT to make significant headway in completing a comprehensive region-wide sea level rise vulnerability assessment that informs the development of a regularly updated regional adaptation plan. The adaptation plan will include local and regional scale implementation projects that help address vulnerabilities and make the Bay Area more resilient to sea level rise and flooding. An important outcome of this project will be a more formalized approach and methodology for determining appropriate strategies for climate adaptation at the local and regional level, and establishing a clear and transparent method for developing an ongoing and updated list of priority projects and investments as part of a regional adaptation plan that are identified through their need, efficacy, value and contribution to local and regional adaptive capacity. How the region, in support of local and regional actions and strategies, establishes shared region wide values for climate adaptation and applies those values to identify priority projects of different shapes, sizes, scales and costs will be instrumental to effectively implementing a regional adaption plan. The PMT is looking to partner with expert consultants and local and regional stakeholders to develop this approach and methodology as part of this project and to achieve the four overall objectives outlined in the Scope of Work and listed below:

Objective 1: *Conduct a robust, region-wide assessment of the transportation system, Priority Development Areas (PDAs), Priority Conservation Areas (PCAs) and disadvantaged and vulnerable communities using several screening tools including the State of California's CalEnviroScreen tool*

Objective 2: *Develop a suite of actions to be advanced at agency, local, regional, state and federal scales, including early and priority actions for transportation assets and services, PDAs, PCAs and community assets and members.*

Objective 3: *Engage partners, stakeholders and the public in an inclusive, participatory process where different ideas, values and knowledge are shared and used to ensure that findings and outcomes are locally and regionally relevant, with a focus on robust representation and the participation of and representation from vulnerable and disadvantaged communities.*

Objective 4: *Increase regional agreement on the tools, processes, models and data used in adaptation planning to build capacity among federal, state, regional and local agencies and organizations to work together towards multi-benefit, shared solutions that are based in robust, inclusive assessments that can support the decision making necessary to take effective action. Developing a consistent approach to this work at the regional scale will also increase the technical assistance that the region can provide to local jurisdictions, agencies and organizations and aid in prioritizing actions at a variety of scales.*

The PMT is seeking a consultant who has extensive experience in assessing, communicating, and responding to the risks posed by current and future flooding, and is at the forefront in advancing new and evolving approaches that are responsive to new information, data, science and changing conditions. The following sections address the specific tasks and subtasks of the Scope of Work to be undertaken by the consultant and are intended to serve as a guide for prospective consultants in preparing their statement of qualifications. The consultant will be primarily focused on deliverables outlines in Tasks 2 through 6 in the Scope of Work. These tasks will include a range of technical analysis, methods, tools, visualizations and written products. The successful consultant will work closely with the PMT at the outset of each task to collaboratively design, develop and communicate task deliverables.

For reference, samples are provided of the types of task deliverables that would be desirable for this project. These are not intended to be exhaustive and the successful consultant is encouraged to make the case and recommend new tasks and deliverables that will help better achieve the objectives and long-term goal set out above.

General Description Of Project

The PMT is seeking to conduct a climate assessment to evaluate the vulnerabilities and consequences of, and develop adaptation strategies for, the Bay Area transportation network, the Priority Development Areas (PDAs), Priority Conservation Areas (PCAs) as identified in Plan Bay Area, and communities with characteristics that make them more vulnerable to flood risks. The project seeks to illustrate the inter-connected nature of regional vulnerabilities and identify the need for a range of adaptation strategies, including physical interventions, governance approaches and funding and financing options.

The Bay Area region has been working on climate adaptation and resilience efforts for many years, with intensifying efforts over the last three years. This work has resulted in a number of completed studies and projects and the development of a range of products, approaches, tools, methodologies, findings, recommendations, adaptation options and communication strategies that will serve as the foundation for this project.

The PMT will work with a consultant to consolidate and integrate the relevant work completed to date and will use this work to form the base of a regional vulnerability assessment and ultimately, a regional adaptation plan. To reach that goal, the consultant will work with the PMT and local stakeholders on a number of key activities as listed below:

- Conduct research and include geographic areas and communities that have been under-represented to date due to constrained resources;
- Develop a streamlined assessment framework for specific assets that can be adaptive over time;
- Design feasible yet creative and innovative adaptation strategies that will reduce risks while creating community and regional benefits;
- Identify new or existing funding sources that can be deployed to support local and regional adaptation strategies;

The consultant will work closely with the PMT throughout, with specific attention on deliverables identified in the tasks and subtasks below:

	Task Name	Anticipated Consultant Role	Task Description
2.1	Regional Working Group formation		Propose no consultant role
2.2	Public Engagement Plan		Provide input, feedback and guidance on public engagement plan developed by BCDC, regional working group members and NGO participation
2.3	RWG Meetings - 12 or More	Priority Task	Provide between four and seven technical presentations to the RWG
2.4	Public Engagement Meetings - 7 or more	Priority Tasks	Provide between two and four technical presentations in the public engagement meetings
			Assist the PMT in a team environment to develop communication, engagement and translation material for use in the public participation meetings
3.1	Develop transportation and community assets list	Minimal Consultant Involvement	Will be done with the RWG. Will be provided to the consultants.
3.2	Climate impacts and scenarios	Supportive Role	Consultant will review the existing climate impacts and scenarios developed and used in the Adapting to Rising Tides Program and advise changes as necessary.
3.3	Maps of regional vulnerabilities	Supportive Role	Consultant will use the ART regional maps, the ART community indicators maps, MTC data on PDAs, PCAs and transportation assets
			Consultant will identify the best available source for data and obtain it if it has not already been developed or obtained by the PMT. The consultant should work with RWG members and others to obtain data
			PMT and consultant should identify an approach to either funding the SLR maps for eastern Contra Costa County and eastern Solano County or an approach to conducting the assessment of these areas without those maps.
3.4	Assessment questions and preliminary vulnerability assessment	Minimal Consultant Involvement	Assessment questions and preliminary vulnerability assessment
			Using the ART Program methodology and existing findings, BCDC will be the lead and conduct the majority of the work on the Task 3.4 working closely with the RWG. Will be shared with the consultant.
3.5	Data and information gaps	Supportive Role	The PT will share the data and information gaps with the consultants and together with the consultants and the RWG identify an approach for either closing those gaps or moving forward with those gaps in place

3.6	Finalized assessment findings	Priority Task	BCDC will be the lead working closely with the RWG to finalize the assessment findings
			Consultant, working with BCDC, to provide approaches to improve the communication of the findings from the assessment suitable for different audiences- RWG, public meetings, decision makers
3.7	Vulnerability and consequences statements	Supportive Role	Vulnerability and consequences statements developed by BCDC staff and shared with consultant
			Consultant will provide input on content and develop best approach for communicating the statements to a broad audience.
4.1	Preliminary transportation and community asset indicators	Priority Task	Working together, the PT and the consultant, in coordination with the RWG, will develop a preliminary set of transportation and community asset indicators using a similar methodology and approach to Stronger Housing, Safer Communities
			Consultant to conduct a scan of similar approaches in the country that could be used as a model
4.2	Draft Regional Assessment Framework	Priority Task	Using the preliminary approach developed in Task 4.1, Consultant to take the lead on developing a draft regional assessment framework which will be evaluated by the PT and presented to the RWG
			Consultant, working closely with the PT, will develop the communication, engagement and presentation material to be used in the RWG meeting that introduces the draft assessment framework
			Consultant, working closely with the PT, will develop the communication, engagement and presentation material to be used in the public meeting that introduces the draft assessment framework
			Consultant, in partnership with BCDC, to identify ways that the framework can be used to prioritize action to reduce risk in both current project and future updates
4.3	Final Regional Assessment Framework	Priority Task	Based on the input from the PT, the RWG and the public, the consultant revises and finalizes the regional assessment framework
			Consultant, working closely with the PT, will develop communication material that summarizes the purpose and characteristics of the regional assessment framework, including presentations, two pagers, web material
			Prioritization strategy finalized as well

5.1	Preliminary adaptation actions	Supportive Role	Using material from the Adapting to Rising Tides Program and other assessments and climate adaptation plans, the PT, with BCDC in the lead, will develop a set of preliminary adaptation actions designed to reduce the risks identified in the assessment
5.2	Evaluation Criteria	Supportive Role	Using existing evaluation criteria approach established in the ART Program, BCDC, with support from the consultant will develop an evaluation criteria approach that is both qualitative and quantitative in nature. Consultant, with support from BCDC, will develop communication and engagement material regarding preliminary evaluation criteria approach to be presented to RWG and at public meeting.
5.3	Preliminary list of priority actions and finalize priority actions	Supportive Role	PT, working with the RWG and the public, will develop a preliminary list of priority actions
			PT, with BCDC in the lead, will present the list of preliminary priority actions to the RWG and the public. Consultant may provide assistance on communication and engagement material for these meetings
			PT, with BCDC in the lead, will finalize priority actions using input from PT, RWG, the public and the evaluation criteria results
			Present finalized priority actions to RWG and the public
6.1	Implementation recommendations	Priority Task	Consultant in coordination with BCDC, using material from the ART Program on adaptation actions and implementation pathways, develops recommendations regarding implementation for priority actions. Consultant, in coordination with BCDC, will develop communication and engagement material to present the implementation recommendations to the RWG and at a public participation meeting.
6.2	List potential sources of funding	Priority Task	Consultant to identify funding sources for implementing priority actions and make recommendations to the PT
6.3	Strategies for incorporation in	Priority Task	Consultant to develop 4 to 7 priority adaptation actions for incorporation in the 2021 Sustainable Communities Strategy, working closely with MTC and BATA, RWG and presented at a public participation meeting.
			Consultant to prepare final report that may include the deliverables from each task.

The selected consultant will be directed by the PMT, and the consultant's progress will be monitored by the Project Manager.

C. AREAS OF CONSULTANT EXPERIENCE

The PMT is seeking respondents who have knowledge of the Bay Area region and the shoreline communities who will be most impacted by increased flooding and sea level rise. The consultant, and/or any subconsultants that may constitute a consultant team, should have experience and technical expertise in climate change, in particular the impacts of climate change on transportation systems, urbanized areas, natural systems and disadvantaged and vulnerable populations, and the types of solutions and strategies needed to address those impacts over sufficient timelines, as well as the types of financing mechanisms needed to address these challenges. In order to meet the range of qualification desired, a contractor team may include a combination of private sector companies, academia, and/or non-profit organizations.

Preference will be given to firms that possess the following expertise:

- Proven ability to work collaboratively in a diverse team environment.
- Openness to new ideas
- Proven capacity to communicate technical and scientific data and information to a broad audience, including decision-makers, the general public, and stakeholders from agencies, non profits, and organizations at all scales.
- Strong coastal engineering expertise and capacity. Proven ability to be innovative and creative when identifying solutions to flood rise. Thinking beyond seawalls and levees will be critical.
- Strong transportation and building engineering expertise, particularly as it relates to preparing for hazards such as flooding and seismic.
- Experience with solving challenging issues, and working with diverse stakeholders to explore those challenges and arrive at recommendations for solutions.
- Experience in managing complex technical data.
- Familiarity with data sources related to Bay Area precipitation, and sea level rise impacts and expertise in integrated analysis.
- A comprehensive understanding of climate impacts and the relation with physical, infrastructure, social and environmental vulnerability in addition to climate mitigation strategies.
- Capacity to assess and integrate economic costs, and social vulnerabilities with physical, infrastructure, and environmental vulnerabilities, and contribute to solution development.
- Experience developing policy, regulatory, design and service interventions as part of an urban planning process (or specifically climate vulnerability assessment) with multiple stakeholders.
- Expertise in graphic design and communications to display initiative findings in an accessible and dynamic way, and develop design renderings of selected proposed initiatives.

-

II. MINIMUM QUALIFICATIONS

SOQs must demonstrate that the firm or team submitting the SOQ (“Proposer”) meets the following Minimum Qualifications to be eligible for consideration for this project.

- At least **two (2)** projects within the past five (5) years where proposer has developed education and outreach plans related to climate change. These plans would demonstrate experience communicating the science and community impacts to a diverse public in a variety of different ways.
- At least **three (3)** projects within the past five (5) years where the proposer has developed performance indicators for infrastructure, community assets and quality of life. At least one example shall involve transportation indicators.
- At least **two (2)** projects within the past five (5) years where the proposer has conducted a cost-benefit analysis for a project, weighing the cost of action versus inaction. Proposer shall demonstrate where they have analyzed range of consequences including social and economic factors.

III. SCOPE OF WORK, PERIOD OF PERFORMANCE, AND BUDGET

A. Scope of Work

All work will be assigned pursuant to PMT-initiated task orders, that will include a specific scope of work based on the tasks identified in *Appendix A, Preliminary Scope of Work*. Payment for work performed under task orders may be deliverables-based or time and materials, as determined by the MTC Project Manager. A sample task order form is attached hereto as Attachment A-2, *Task Order Form* to *Appendix D, MTC Standard Consultant Contract*. Selection to be on the Consultant Bench does not guarantee that a firm will be awarded any projects.

B. Period of Performance

MTC expects the work to commence on or about June 15, 2017, and to be completed no later than August 31, 2019. At MTC’s sole option, the contract may be extended for one (1) additional years for work contemplated by *Appendix A, Scope of Work*.

C. Budget

The PMT has budgeted approximately four hundred and fifteen thousand dollars (\$415,000) for this effort. Additional funding may be available in future Fiscal Years (FYs) subject to approval of future PMT budgets.

IV. PRE-SUBMITTAL CONFERENCE AND REQUESTS FOR CLARIFICATION OR EXCEPTIONS

A pre-submittal conference will be held at 10:00 a.m. on Friday, April 7, 2017 at the Bay Area Metro Center, 375 Beale Street, San Francisco, in the Ohlone Conference Room. Proposers may also participate via conference call using the following information:

Primary Dial In: 877-336-1831
Alternative Dial In: 404-443-6397
Access Code: 7504227

Any addenda will be posted on MTC's website, <https://mtc.bonfirehub.com>. All Proposers are responsible for checking the website for any addenda to the RFQ.

Any requests for clarification of or exceptions to RFQ requirements must be received by MTC no later than 4:00 p.m. on Tuesday, April 18, 2017, to guarantee a response or consideration. MTC reserves the right to reject any SOQ that contains unauthorized conditions or exceptions.

V. CONSULTANT SELECTION TIMETABLE

10:00 a.m., on Friday, April 7, 2017	Pre-Submittal Conference, at 375 Beale Street, San Francisco, CA 94105, Ohlone Conference Room
4:00 p.m., on Tuesday, April 18, 2017	Closing date/time for receipt of requests for modifications/exceptions
No later than three (3) business days prior to the date SOQs are due.	Deadline for protesting RFQ provisions
4:00 p.m., Monday, May 1, 2017*	Closing date/time for receipt of SOQs
Week of May 8th, 2017*	Interviews/Discussions (if held)
June, 2017*	MTC Administration Committee Approval

**Interview, award and approval dates are approximate and are subject to change before or after the closing date of the RFQ.*

VI. SUBMITTAL OF SOQ

- Interested firms must submit either 1) one electronic proposal uploaded as per 1a below, or 2) original and one electronic PDF version, of their proposal by **4:00 p.m. on Monday, May 1, 2017. Proposers may submit a proposal per 1 or 2 above to satisfy the submission requirement. No proposals submitted solely by email and no faxed proposals will be considered.**

- 1a. Electronic proposal must be uploaded to <https://mtc.bonfirehub.com> .
- 1b. The hard copies of proposals are to be addressed as follows:

Caltrans Regional Planning Grant: A Resilient Transportation System for Safe and Sustainable Communities RFQ
Attention: Michael Brinton
375 Beale Street, 7th Floor Receptionist
San Francisco, CA 94105

- 1c. Proposer's name and return address must also appear on the envelope.
 - 1d. Proposals will be received only at the website and physical address shown above and **no later than the date and time indicated**. MTC is not responsible for submissions or deliveries delayed for any reason. Any proposals received after said date and time or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened.
 - 1e. All hard copies of proposals, whether delivered by an employee of the Proposer, U.S. Postal Service, courier or package delivery service, must be received and time stamped at the stated address **prior to or no later than the time designated**. The timestamp located on the 7th floor at the receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of proposals
- 2. Proposer agrees and acknowledges all RFQ specifications, terms and conditions and indicates ability to perform by submission of a SOQ.
 - 3. A signed SOQ submitted to MTC in response to this RFQ shall constitute a binding offer from Proposer to contract with MTC according to the terms of the SOQ for a period of 180 days after the SOQs are due to MTC.
 - 4. A SOQ may be withdrawn at any time before the date and time when SOQs are due by submitting a written request for its withdrawal to the MTC Project Manager.
 - 5. This RFQ does not commit MTC to award a contract or to pay any costs incurred by any Proposer in the preparation of a SOQ in response to this RFQ.
 - 6. Only one SOQ will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.
 - 7. MTC reserves the right to accept or reject all SOQs submitted, waive minor irregularities, request additional information, and negotiate with any or all Proposers.
 - 8. MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFQ.

9. If the selected Proposer fails to enter into a contract with MTC in a timely manner as determined by MTC, in accordance with the terms and conditions of this RFQ, MTC reserves the right to reject the SOQ and enter into a contract with the next highest scoring Proposer.
10. Online Vendor Registration is required to be eligible for contract award. Proposers should visit <http://procurements.mtc.ca.gov/Vendors/vendor-information.html> to register in the MTC Vendor Database.
11. The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of Central Contractor Registration / Federal Agency Registration (CCR/FedReg), Online Representations and Certifications Application (ORCA), and Excluded Parties List System (EPLS). Firms submitting SOQs for contracts with federal funds must register on the SAM website at <https://www.sam.gov/portal/SAM/##11> prior to SOQ submission.

VII. FORM OF SOQ

SOQs must be signed in ink and include a statement that the person or persons signing the SOQ is/are authorized to authorize and submit the SOQ on behalf of the Proposer. Page limits, where specified, are for single-sided print. Proposers are encouraged to print double-sided copies to save paper.

SOQ content and completeness are most important. Clarity is essential and will be considered in assessing the Proposer's capabilities.

Proposers must provide the information listed below. Any material deviation from these requirements may be cause for rejection of the SOQ, as determined in MTC's sole discretion.

Each SOQ must include the following:

A. Transmittal Letter

SOQs must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and containing the name and telephone number of a contact person, if different from the signatory. Indicate whether there are any conflicts of interest, actual or apparent, that would limit the Proposer's ability to provide the requested services and describe the plan for mitigating such conflicts. Acknowledge the receipt of this RFQ and any Addendum to the RFQ. Indicate that the SOQ is a firm offer to enter into a contract to perform work related to this RFQ for a period of 180 days from the due date for SOQs.

B. Title Page

SOQs must include a title page that includes the RFQ subject, the name of the Proposer's firm, local address, telephone number, name of contact person, contact person's email address, and the date.

C. Table of Contents

SOQs must include a table of contents that includes a clear identification of the material by section and page number.

D. Overview and Summary

This section should clearly convey the Proposer's understanding of the nature of the work and the general approach to be taken, and identify any specific considerations. It should include, but not be limited to, the following:

1. A discussion of the project's purpose;
2. A summary of proposed approach; and
3. The assumptions made in selecting the approach.

E. Work Plan

This section should present a work plan for the tasks described in *Appendix A, Scope of Work*. The proposed work plan should:

1. Discuss how the Proposer will conduct the identified task, identify deliverables, and propose a schedule. The SOQ should discuss the tasks in sufficient detail to demonstrate a clear understanding of the project and component tasks. The SOQ may include additional tasks or sub-tasks the Proposer believes necessary to accomplish the project goals. The schedule should show the expected sequence of tasks, subtasks and milestones.
2. Provide a staffing plan for each task. Provide an organizational chart that shows roles and responsibilities of key personnel and reporting structure, including reporting and communication relationships between MTC, Proposer staff, and subcontractors, if any.
3. Describe approach to managing resources and maintaining quality results. Include a description of the role of any subcontractors, their specific responsibilities, and how their work will be supervised to maintain quality results.
4. Identify and explain any problem areas and/or potential obstacles (such as maintaining schedule, budget overruns, feasibility, etc.) to successful completion of the Scope of Work, attached as *Appendix A*. Discuss methods, formal and informal, that you will use to track and resolve these problems/obstacles during the project.

F. Qualifications and References

1. Describe proposed team's qualifications specific to the requirements set forth in Section II, Minimum Qualifications. Identify the personnel, including subcontractors' personnel, whose expertise or experience addresses each of the specified needs. Proposers are

welcome to identify and provide examples of any other qualifications they feel are critical to the successful completion of the Scope of Work attached as *Appendix A*.

2. Identify key personnel (including subcontractor personnel) and briefly discuss individual qualifications to perform each task. Each key personnel resume should not exceed two pages.
3. Provide a succinct description (one page maximum) of any previous projects similar to the Scope of Work attached as *Appendix A*, indicating the project title, duration, budget, sponsoring agency and sponsor project manager, and roles played by individuals proposed for this project. Include the name of the agency for whom the work was performed, year performed, name of the contact person and their telephone number.
4. Provide at least one sample of a written technical report or memo and two samples of material developed for a similar study effort. The samples must have been prepared by key members of the Proposer's team and should identify the authors. Only one copy of each sample is required, and the samples will be returned after SOQ evaluation, upon request. The samples will be considered in evaluating firm and staff expertise and experience, and written presentation effectiveness.
5. Provide a list of references (including references for subcontractors) and their contact information.
6. Provide a summary of all contracts your firm (including subcontractors) has held with MTC, MTC SAFE, BATA, BAIFA or BAHA in the past three years, including a brief description of the scope of work, the contract amount, and date of execution. Performance on any MTC, MTC SAFE, BATA, BAIFA or BAHA contract within the past three years may be considered as reference information or when past performance is included as an evaluation factor as noted in Section VIII, Proposal Evaluation.

G. Cost Proposal

7. Proposer will present hourly rates for all proposed project personnel on the Cost and Price Analysis Form attached as Appendix B to this RFQ as well as a description of all costs and expenses that would be passed along to MTC. Hourly rates shall be fully loaded and include all direct and indirect costs. Fully loaded hourly rate means an hourly rate that includes all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, and ordinary materials and supplies. Rates indicated shall be firm for the initial one (1) year.

Appendix B is available in electronic spreadsheet format upon request. Please include information (date and outcome) on the Proposer's most recent pre-award audit, if applicable.

8. Please include information (date and outcome) on the Proposer's most recent pre-award audit, if applicable.

H. California Levine Act Statement

Submit a signed Levine Act statement (*Appendix C*).

I. Insurance Provisions

Submit a signed acknowledgement that the Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix D-1, Insurance Requirements*, within ten (10) days of MTC's notice to firm that it is the successful Proposer.

(See Section IX.B of the RFQ for how to request exceptions to the minimum insurance requirements.)

J. Taxpayer Identification Number and Certification

Submit a W-9, Request for Taxpayer Identification Number and Certification (containing original signature) available at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

K. Federal Requirements

Submit all completed federal-required certifications in *Appendix F, Federal Requirements*, related to lobbying, debarment, and Disadvantaged Business Enterprise (DBE) subcontractor information (*Appendices F-1, F-2, F-3, F-4, and F-5*.)

Firms submitting SOQs for contracts with federal funds must also submit a verification of its SAM registration.

VIII. SOQ EVALUATION

A. Verification of Minimum Qualifications

The MTC Project Manager will review SOQs to ensure that each SOQ meets the Minimum Qualifications set out in Section II, Minimum Qualifications of this RFQ. Proposers failing to meet the Minimum Qualifications will not be considered.

B. Review for General Responsiveness

The MTC Contracts Specialist, in consultation with the MTC's Office of General Counsel, will conduct an initial review of the SOQs for general responsiveness and inclusion of the items requested in Section VII, Form of SOQ. Proposers failing to meet the Minimum Qualifications listed in this RFQ or to satisfy the federal Disadvantaged Business Enterprise (DBE) requirements (if applicable), will not be considered responsive. Also, any SOQ that does not include enough information to permit the evaluators to rate the SOQ in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. A SOQ that fails to include one or more items requested in Section VII, Form of SOQ may be considered

responsive, if evaluation in every criterion is possible. MTC reserves the right to request additional information from responsive Proposers prior to evaluation.

C. Evaluation Panel and Evaluation Criteria

Responsive SOQs will then be evaluated by an evaluation panel of MTC, BARC, BCDC and/or Caltrans District 4 staff. The evaluation of the SOQs shall be within the sole judgment and discretion of the evaluation panel.

All contact during the evaluation phase shall be through the MTC Project Manager only. Proposers shall neither contact nor lobby any evaluation panel members during the evaluation process. Any attempt by Proposer to contact and/or influence members of the evaluation panel may result in disqualification of Proposer.

Responsive SOQs shall be evaluated on the basis of the following evaluation factors, with their relative importance indicated by percentages:

1. Completeness and quality of the proposal (%);
2. Experience of Project Manager and Key Staff (%)
3. Quality and depth of project experience (%);
4. Quality and detail of proposed public participation process that achieves the goals of this RFP (%);
5. Level of experience of project to successfully carry out the proposed public participation process and ability to meet the public engagement goals of the project (%); and
6. Cost effectiveness, including hourly rates (%).

D. Proposer Interviews

The evaluation process consists of a two-stage approach including an initial evaluation of the written SOQs to develop a short list of Proposers that will continue to the final stage of interviews. Those Proposers with SOQs that score at least 75 points based on the total points available for the evaluation factors listed above will be interviewed. All other Proposers will be eliminated from the process. All Proposers not selected for the short list will be notified; however, the preliminary scores at that time will not be communicated to Proposers and the evaluation record shall remain confidential until the MTC Administration Committee authorizes award.

MTC reserves the right to not convene interviews and to make an award on the basis of written SOQs, alone. SOQs should be submitted on the most favorable terms. References may be contacted at any point in the evaluation process. Further, MTC reserves the right to accept or reject any and all SOQ submitted, to waive minor irregularities in SOQs, and to request additional information from one or more of the Proposers. Any award made will be made to the

firms whose SOQs are the most advantageous to MTC, based on the evaluation criteria listed above.

During the evaluation, any potential conflicts of interest (see Section IX, General Conditions, Subarticle F) will be considered. MTC may request additional information from any firm that appears to have an organizational conflict of interest, including its plan to mitigate any such conflicts. MTC will not award a contract to a firm with an actual conflict of interest, or with an apparent conflict of interest that cannot be adequately mitigated, in MTC's sole opinion.

E. Recommendation for Contract Award

The panel will recommend the selected Consultant to the MTC Executive Director, based on evaluation of the written SOQ and oral interviews (if held). The Executive Director will review the recommendation and, if he agrees, he will approve the award or forward the recommendation to the MTC Administration Committee which authorizes award.

IX. GENERAL CONDITIONS

A. Award

Any award made will be to the Proposer whose SOQ is most advantageous to MTC based on the evaluation criteria defined in Section VIII. If the selected firm fails to enter into a contract with MTC in a timely manner as determined by MTC, in accordance with the terms and conditions of this RFQ, MTC reserves the right to reject the SOQ of the selected firm and enter into a contract with the next highest scoring firm.

B. Contract Arrangements

MTC's Standard Consultant Contract is attached as *Appendix D*. If a Proposer wishes to propose a change to any standard MTC contract provision, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of requests for clarifications/exceptions. If no such change is requested, the Proposer will be deemed to accept MTC's standard contract provisions, unless such language is protested in accordance with Section C below.

The selected Consultants will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1, Insurance Requirements*. Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements in *Appendix D-1*, within ten (10) days of MTC's notice to firm that it will be issuing a contract to the Proposer. Requests to change MTC's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions. MTC will review the requests and issue an addendum if material changes requested by a prospective Proposer are acceptable. Objections to MTC determinations on requests to change insurance requirements pursuant to the protest provisions of this RFQ must be brought to MTC's

attention no later than the deadline for protesting RFQ provisions or compliance with all material insurance requirements will be assumed.

The contracts resulting from this RFQ will be task order based allowing a for deliverables based payment.

C. Selection Disputes

A Proposer may object to a provision of the RFQ on the grounds that it is arbitrary, biased, or unduly restrictive, or to the selection of a particular Proposer on the grounds that MTC procedures, the provisions of the RFQ or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

1. No later than 4:00 p.m. on the third business day prior to the date SOQs are due, for objections to RFQ provisions; or
2. No later than 4:00 p.m. on the third business day after the date the firm is notified that it did not meet the minimum qualifications or was found to be non-responsive; or
3. No later than 4:00 p.m. on the third business day after the date on which the firm is notified that it was not selected, or if applicable the date the appropriate committee authorizes award, whichever is later, for objections to Proposer selection.

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the MTC Administration Committee authorizes award.

Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the MTC review officer to recommend a resolution to the MTC Executive Director.

The MTC Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Should a Proposer wish to appeal the decision of the MTC Executive Director, it may file a written appeal with the [MTC Operations Committee/MTC Administration Committee/BATA Oversight Committee/BAIFA/BAHA], no later than 4:00 p.m. on the third business day after receipt of the written response from the MTC Executive Director. The MTC Administration Committee's decision will be the final agency decision.

Authorization to award an agreement to a particular Proposer by MTC shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the MTC Executive Director or, if the decision of the MTC Executive Director is appealed, the issuance of the MTC Administration Committee's decision.

D. Public Records

This RFQ and any material submitted in response to this RFQ are subject to public inspection under the California Public Records Act (Government Code §6250 *et seq.*), unless exempt by law. Other than proprietary information or other information exempt from disclosure by law, the

content of proposals submitted to MTC will be made available for inspection consistent with its policy regarding Public Records Act requests.

If the Proposer believes any proposal content contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer may request that MTC withhold from disclosure such proprietary materials by marking each page containing proprietary information, including financial information, if any, required to be submitted under Section VII of this RFQ, as confidential and shall include the following notice at the front of its proposal:

“The data on the following pages of this proposal, including financial information submitted under Section VII of the RFQ marked along the right margin with a vertical line, contain technical or financial information that constitute trade secrets and/or that, if disclosed, would cause substantial injury to the Proposer's competitive position. The Proposer requests that such data be used for review by MTC only, but understands that exemption from disclosure will be limited by MTC's obligations under the California Public Records Act. If an agreement is awarded to the Proposer submitting this proposal, MTC shall have the right to use or disclose the data, unless otherwise provided by law. [List pages].”

Failure to include this notice with relevant page numbers shall render any “confidential/proprietary” markings inadequate. Individual pages shall accordingly not be treated confidentially. By submitting a proposal with portions marked as confidential or proprietary, a Proposer represents it has a good faith belief that such portions are exempt from disclosure under the California Public Records Act. Any language purporting to render the entire proposal confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the Proposer may not designate any required proposal forms or the cost proposal as confidential. Consequently, any language purporting to render any proposal forms or the cost proposal as confidential or proprietary will be regarded as ineffective and will be disregarded.

In the event properly marked data is requested pursuant to the California Public Records Act, the Proposer will be advised of the request. If the proposal requests that MTC withhold such data from disclosure and MTC complies with the Proposer's request, the Proposer shall assume all responsibility for redacting the proposal; defending any challenges resulting from the non-disclosure; indemnifying, defending MTC and holding MTC harmless from and against all claims, legal proceedings, and resulting damages and costs (including but not limited to attorneys' fees that may be awarded to the party requesting such Proposer information); and paying any and all costs and expenses relating to the withholding of the Proposer information. Proposer agrees that MTC's sole involvement in any litigation resulting from MTC's withholding of records shall be to retain the records until otherwise ordered by a court.

If the Proposer does not follow all of the requirements in this section for withholding proprietary information as exempt from disclosure under the California Public Records Act, MTC shall have no obligation to withhold the information from disclosure, and the Proposer shall not have a right to make a claim or maintain any legal action against MTC or its commissioners, officers, employees or agents in connection with such disclosure.

E. Key Personnel

Key Proposer personnel assigned to the project are expected to remain on the project. Any change in key personnel on the proposed PMT is subject to prior written approval of MTC. Removal of any key personnel identified in the SOQ without written consent of the MTC Project Manager may be considered a material breach of contract.

F. Conflicts Of Interest

By submitting a SOQ, the Proposer represents and warrants that no commissioner, officer or employee of MTC is in any manner interested directly or indirectly in the SOQ or in the contract that may be made under it or in any profits expected to arise therefrom, as set forth in California Government Code Section 1090.

The Proposer further warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code Sections 1090 *et seq.* or 87100 *et seq.* during the performance of services under any contract resulting from this RFQ and that it will not knowingly employ any person having such an interest. Violation of this provision may result in the contract being deemed void and unenforceable.

Whenever MTC is awarding a contract that involves the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts of the Proposer, and if so, whether any potential bias can be mitigated acceptably by MTC and the Proposer. After award, the winning Proposer shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under the agreement resulting from this and other MTC solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other project.

Proposer shall not engage the services of any subcontractor or independent contractor on any work related to this RFQ if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this RFQ.

G. Not Used***H. Not Used******I. Web-Based Communication***

Proposer agrees to submit all communication and required documentation, including but not limited to invoices, requests for contract modifications, etc. to the MTC Project Manager or

his/her designee via a web-based system designated by MTC to which MTC will provide system access.

J. Payment, Sub-Contractor and Prevailing Wage Information

Proposer agrees to submit payment, sub-contractor utilization and if applicable certified payroll information for contracts with prevailing wage requirements via a web-based system designated by MTC to which MTC will provide system access.

K. Cooperative Use

The Bay Area Toll Authority (BATA), Metropolitan Transportation Commission Service Authority for Freeways and Expressways (MTC SAFE), Bay Area Headquarters Authority (BAHA), Bay Area Infrastructure Financing Authority (BAIFA) and other local agencies may utilize this RFQ to obtain on-call Construction Management and Design Services, at the same terms and conditions included in this RFQ and firms SOQ's during the period of time that contracts resulting from this RFQ are in effect.

L. Disadvantaged Business Enterprise (DBE) Requirement

Effective July, 2012, the California Department of Transportation (Caltrans) requires recipients of DOT grant funds through Caltrans to impose the following DBE utilization requirements on its consultants and contractors. Consultant's DBE participation on this Agreement will assist Caltrans in meeting its federally mandated statewide overall DBE goal. See *Appendix F, Federal Requirements*.

APPENDIX A, PRELIMINARY SCOPE OF WORK

The successful Proposer's preliminary scope of work related to the Caltrans Regional Planning Grant is listed below. All required services shall be authorized by Task Order, initiated and developed according to the Task Order Process described in Attachment A-1, of *Appendix D, MTC Standard Consultant Contract*. Task Orders shall include, at a minimum, a detailed description of the work to be performed, a completion date for performance, a maximum payment amount, payment terms (deliverables-based or time and materials) and subconsultant participation (if any), in a completed form as shown in Attachment A-2, Task Order Form, *Appendix D, MTC Standard Consultant Contract*, attached hereto and incorporated herein by this reference.

The complete Scope of Work that is outlined below includes tasks that are the responsibility of the Project Management Team (PMT), the consultant team or a combination of both. The tasks that the PMT anticipates will involve the consultant team are listed in a table on pages 5 through 7 of this RFQ.

Task 1. Project Initiation and Administration

CONSULTANT will coordinate with PMT to develop the overall advisory and management structure for the project. The primary purpose of this task will be developing an agreement for how the PMT communicates, makes decisions and administers the project.

Task 1.1 First Meeting of the Project Management Team (PMT):

At the first meeting of the PMT, MTC, BCDC, Caltrans District 4 and BARG will discuss grant administration, determine key process considerations and identify the components of the Project Charter to ensure that all parties agree to the issues that to be addressed.

Task 1.2 Project Charter:

The PMT will develop and execute a Project Charter identifying roles and responsibilities of the members of the PMT, developing a preliminary schedule of PMT meetings and the overall advisory structure for the Project.

Task 1.3 Consultant Selection:

The PMT shall obtain the services of a consultant to assist with the Scope of Work. The entire PMT shall participate in the consultant selection process. Other key stakeholders may either participate in the process or be consulted during the selection process.

MTC shall administer the consultant selection process.

Task 1.4 Refine Work Scope, Schedule and Budget:

The PMT shall work with the consultant and other key stakeholders to refine the work scope, schedule and budget. While the major deliverables will not change, this task will allow for input on the scope and schedule from the consultant and other key stakeholders. Adjustments will be made if necessary to ensure the project is based on the best available information and data from past efforts. This task will result in a final work scope, schedule and budget that will be feasible to achieve and that all parties have agreed to.

Responsible Party: MTC in the lead with PMT for support

Task Deliverables:

- 1.1: First Meeting of the Project Management Team
- 1.2: Project Charter
- 1.3: Consultant Selection
- 1.4: Refined work scope, schedule and budget

Task 2. Working Group and Public Engagement

Task 2 will result in the formation of a Regional Working Group (RWG) and the development of a Public Engagement Plan that will ensure active participation by the agencies, organizations, jurisdictions and members of the public throughout each stage of the project.

Task 2.1 Form RWG:

As part of Task 2.1, identify those agencies, organizations and jurisdictions that will be asked to participate in the working group. The RWG will be made up of transportation and transit providers, local jurisdictions where Priority Development Areas (PDAs) and vulnerable and disadvantaged communities (as identified by the State of California's CalEnviroScreen tool and MTC Communities of Concern) are located, regional organizations such as the Association of Bay Area Governments (ABAG) and State and Federal agencies such as the National Oceanic and Atmospheric Administration (NOAA) and the Federal Emergency Management Administration (FEMA). The RWG will provide data, information, perspectives and technical expertise to the PMT throughout the project. In identifying RWG members, existing groups and efforts (such as the Adapting to Rising Tides (ART) working groups, San Mateo and Marin Advisory Committees, MTC's standing advisory committees will be used as a starting point. The PMT and Consultant will develop a one page communication tool to provide information about the project to prospective RWG members. The RWG will work with the PMT to define member roles and responsibilities and determine the location for a public project webpage and working group project webpage where information can be shared and exchanged.

Task 2.2 Develop Public Engagement Plan:

The PMT will develop a Public Engagement Plan highlighting the geographic and issue areas that will be the focus of public engagement for the project, and will engage the RWG in guiding the public outreach process. The Public Engagement Plan will focus on ensuring the participation of community groups, businesses, issues groups, Non- Governmental Organizations and others who are critical stakeholders beyond the agencies and jurisdictions represented by the RWG. At the first meeting of the RWG, the PMT will obtain feedback and input on the Public Engagement Plan, ask members to help identify the community groups, community members, business members and other individuals and groups that should be included in the public engagement, determine the location, timing and number of public meetings to be held, and decide what languages project materials will be provided in through translation. A special effort will be made to identify existing community and issue groups to be included.

Task 2.3 Conduct RWG meetings:

The RWG will be engaged throughout the project through meetings, telephone and email communications, survey and field work and through a RWG specific project webpage. There

will be no fewer than twelve RWG meetings during the project. The following is a preliminary schedule of RWG meetings based on the major project tasks:

- Kick off meeting within the first two months of project initiation to discuss project scope and determine roles and responsibilities for the RWG
 - Three meetings while Conducting the Assessment
 - Two meetings during the development of the Regional Assessment Framework
 - Three meetings to Develop Adaptation Strategies
 - Three meetings during the Confirm and Implement Adaptation Strategies

Task 2.4 Conduct Public Engagement:

The public, including the community groups, businesses and business groups, issue groups and others will also be engaged throughout the Project to ensure that the needs, concerns and input of these groups and members of the public are understood and incorporated into the project as vulnerabilities are identified and adaptation strategies are developed. This engagement will provide an opportunity for participants and the PMT to learn together what issues and vulnerabilities are and the ways to reduce these vulnerabilities that will provide more protection to transportation and community assets from current and future flooding in a way that will be supported and advanced by those in the community. The following is a preliminary schedule of public meetings:

- 1 meeting while Conducting the Assessment
- 1 meeting during the Development of the Regional Assessment Framework
- 2 meetings to Develop Adaptation Strategies
- At least 3 meetings to Confirm and Implement Adaptation Strategies, one in the North Bay, one in the South Bay and one in the Central Bay

Responsible Party: Project Management Team with BCDC in the lead (PMT) and Consultant

Task Deliverable

- 2.1: Regional Working Group formation
- 2.2: Public Engagement Plan
- 2.3: RWG Meetings (12 or more)
- 2.4: Public Engagement Meetings (7 or more)

Task 3. Conduct Regional Assessment of Transportation and Community Assets

This task will identify the transportation and community assets, PDAs, and the geographic areas with vulnerable and disadvantaged communities to be included in the regional vulnerability assessment, as well as the climate impacts and scenarios to be evaluated. Mapping will be conducted to determine which assets will be exposed to these scenarios and an approach will be developed based on ART Program prior projects to clearly and efficiently identify the underlying causes and components of vulnerability. Working with the RWG, the PMT will develop an agreed upon approach that explicitly defines the scale, or degree of detail, of the assessments to be conducted for each type of asset or sector (i.e., asset-specific analyses or broad, sector-wide review level). For sectors with numerous, similar assets, a detailed look at a few representative assets will be considered.

Task 3.1 Identify the Transportation and Community Assets:

Transportation and community assets will be based on those listed in the Project Background (above) and will include transportation and transit assets, the geographic areas identified by the region as PDAs and the geographic areas with vulnerable and disadvantaged communities based on Cal EnviroScreen and refined by MTC's Communities of Concern designation. The list of assets and geographic areas will be refined in consultation with the Consultant, the RWG, and at the first public engagement meeting to ensure the project is adequately evaluating those assets most critical to the region and its communities, and is taking best advantage of existing data and information from ongoing and completed projects.

Task 3.2 Determine Climate Impacts and Scenarios:

With Consultant, the climate impacts and scenarios that will be used in the assessment will be determined. Climate impacts may include temporary flooding, permanent flooding, erosion, saltwater intrusion, groundwater rise, riverine flooding, coastal flooding and heavy precipitation. The specific impacts included will be based on the availability of information and data and the issues and concerns that are most important to the PMT and the RWG. The climate scenarios will include a variety of possible flood risk scenarios and water levels, from current flood risk during annual high tides (King Tides) to future flooding conditions with up to 9 feet of sea level rise.

Task 3.3 Regional Vulnerabilities Mapping:

With Consultant, maps of the assets identified in Task 3.1 and climate scenarios from 3.2 will be developed to support the identification of the transportation and community assets most likely to be exposed to the selected climate impact.

Task 3.4 Develop Preliminary Vulnerability Assessment:

Based on the mapping in Task 3.3, exposed assets and geographies will be evaluated to determine those with data and information to support further assessment to determine the underlying causes and components of vulnerability.

The further assessment will rely on availability of data and information from existing ongoing and completed studies, such as ART Alameda County, ART Contra Costa County, ART FHWA Phases 1 and 2, Silicon Valley 2.0 and other projects and studies identified by the RWG. Use the ART Assessment Questions, which have been used in ART FHWA Phases 1 and 2 and other efforts around the region, and working closely with the RWG, data and information will be collected, collated and synthesized to identify transportation and community vulnerabilities.

Task 3.5: Identify information gaps

The assets and geographies identified in the exposure analysis (Task 3.3) that lack critical information needed for the assessment will be identified. The PMT will coordinate with RWG and with organizations and groups through the public engagement process to determine if there is existing information and data to fill the gaps identified. Transportation and community assets that are critical to the region and its communities but where information and data is lacking will be identified, and a framework for furthering assessing and evaluating these assets using regional indicators where feasible will be developed (see Task 4).

Task 3.6 Finalize the Assessment

Based on the findings, information and input of Tasks 3.3, 3.4 and 3.5, the vulnerability assessment based on existing data and information will be finalized and presented to the RWG and during the public engagement process.

Task 3.7 Determine Consequences of Vulnerabilities:

The PMT will develop clear, concise vulnerability and consequence statement for the final list of assets evaluated. These statements will identify the type of vulnerability (physical, functional, governance, information) and the consequences of that vulnerability on the environment, economy, society and equity. The consequences to the transportation system and the region's communities that are identified in the task will provide for a compelling regional and community story that will assist the region in prioritizing actions for implementation. These statements will be used to more quickly communicate the findings of the assessment to decision-makers, the public, the RWG, funders and others.

Responsible Party: PMT with BCDC in the lead, Consultants

Task Deliverable

- 3.1: Transportation and Community Assets List
- 3.2: Climate Impacts and Scenarios
- 3.3: Maps of Regional Vulnerabilities
- 3.4: Assessment Questions and Preliminary Vulnerability Assessment
- 3.5: Data and Information Gaps
- 3.6: Finalized Assessment Findings
- 3.7: Vulnerability and Consequences Statements

Task 4. Regional Assessment Framework

Based on previous efforts conducted in the region, there are assets and geographic areas that lack the data and information necessary to assess their vulnerability. For those assets that are critical to the region, such as the Bay Bridge, or that will affect vulnerable and disadvantaged communities that rely on them, it is important that this lack of data does not result in vulnerabilities being overlooked or not adequately assessed. One way to address this lack of data and information is to develop a regional assessment framework based on indicators rather than asset-specific data. This approach has been successfully employed in several efforts, including the EPA/FEMA funded Safer Housing, Stronger Communities, conducted by ABAG and BCDC, and the ART Program's assessment of shoreline protection. Building on these efforts, and in close consultation with the Consultant and the RWG, indicators will be developed for transportation and community assets where more specific data and information is lacking and a regional assessment is needed.

Task 4.1 Identify Preliminary Transportation and Community Asset Indicators:

Based on Task 3.6 and in close coordination with the Consultant and the RWG, a framework for conducting an assessment of transportation and community assets that uses indicators where data and information is lacking will be developed. Such indicators could include age of structure, type of asset or structure, material used to construct, etc. The community indicators developed in

Stronger Housing, Safer Communities will be used as a starting point for vulnerable and disadvantaged communities. Once completed, the indicators and the framework could be used by other Caltrans regions or state- wide, resulting in high level screening that will help prioritize and direct funding to areas and assets where specific data and information needs to be collected.

Task 4.2 Confirm Transportation and Community Asset Indicators:

Working closely with Consultant and transportation and transit providers, operators and managers, as well as the RWG, test the preliminary indicators selected in Task 4.1 to determine their performance in assessing vulnerability.

Task 4.3 Draft Regional Assessment Framework:

Using the indicators developed and refined in Task 4.1 and 4.2, work with Consultant to develop a regional assessment framework that uses the indicators to conduct a high-level regional assessment. Present the framework to the RWG, other interested parties and stakeholders, including Caltrans staff, and during the public engagement process for input and feedback on the indicators and their use.

Task 4.4 Final Regional Assessment Framework:

Finalize the assessment framework based on the performance of the indicators selected and how accurately they identify vulnerabilities, the value of this information to the assessment and the feedback and input provided in Task 4.3.

Responsible Party: PMT with MTC and Caltrans in the lead and Consultant

Task Deliverable

4.1: Preliminary Transportation and Community Asset Indicators

4.2: Final Indicators

4.3: Draft Regional Assessment Framework

4.4: Final Regional Assessment Framework

Task 5. Develop Strategies

Adaptation strategies will be grounded in the findings of the assessment (Tasks 3 and 4). Strategy development will begin with a review of policy, planning, mitigation and adaptation actions that have been developed in previous projects, plans and efforts. These will be adapted for the project specific issues identified by the RWG as well as other transportation and community groups, resulting in a suite of draft adaptation strategies that are organized by the critical nature of the consequence, the timing of the vulnerability, or the ability to address a cluster of vulnerabilities in one geographic area. The PMT, the RWG and the public as part of the public engagement process will vet the draft adaptation strategies. This engagement will help ensure that adaptation strategy options will be the most practical, feasible, and responsive to vulnerabilities and community and agency concerns.

Task 5.1 Develop Preliminary Actions:

Based on the assessment findings in Tasks 3 and 4, adaptation strategies will be developed to address the vulnerabilities and reduce the consequences to the assets, the communities and the region. Strategy development will begin by building on existing efforts in the region such as ART FHWA Phases 1 and 2, Stronger Housing, Safer Communities, Bay Area Rapid Transit (BART) and Capitol Corridor assessments and other efforts, as well as the experiences outside of the region in New York and New Jersey and the Gulf Coast. Strategies will be refined using information from the RWG and the public engagement process to ensure they resonate locally and will be supported by local, regional and state agencies and Bay Area organizations and communities.

Task 5.2 Develop evaluation criteria:

Evaluation criteria are a tool agencies, organizations and communities can use to select and prioritize adaptation actions for implementation, and help decision-makers understand tradeoffs and consequences of individual and multiple actions that together build towards resilience. In this task the PMT will develop proposed evaluation criteria that consider all four sustainability frames - society and equity, the environment, economy and governance, and will engage the RWG and the public in reviewing, refining and applying the evaluation criteria to the adaptation strategies developed in Task 5.1.

Task 5.3 Develop Preliminary List of Priority Actions:

The preliminary list of actions using the final criteria and refine and prioritize the list from Task 5.1 into a preliminary list for priority actions. Present to the RWG for input and feedback and present at three locations in the region as part of the public engagement process for input and feedback. Refine the actions based on RWG and public input and with limited participation from the Consultant.

Responsible Party: PMT with BCDC and BARC in the lead, with limited Consultant participation

Task Deliverable

5.1: Preliminary Actions

5.2: Evaluation Criteria

5.3: Preliminary List of Priority Actions

Task 6. Confirm and Implement Adaptation Actions

Task 6 will result in a final, prioritized list of adaptation actions and strategies, implementation and funding recommendations, and a final report detailing the findings, process and lessons from this project. Recommendations will be made for how best to advance high priority adaptation strategies that require shared, coordinated action as well as those that can be implemented by individual agencies and organizations. This task will result in priority adaptation actions for both Caltrans District 4 and MTC to include for funding and implementation in Plan Bay Area (the Bay Area's Sustainable Communities Strategy) as well as other local and regional plans.

Task 6.1 Implementation Recommendations:

Recommendations for integrating adaptation strategies into state, community and regional plans will be developed for proposed action. These will vary, for example, implementation of actions

that lead to physical interventions such as reengineering/redesigning infrastructure or building levees will be different than implementation of actions to improve inter- and intra-agency coordination or increasing the emergency preparedness and response capacity of transportation asset managers. The PMT and the RWG will work together to develop implementation recommendations for priority adaptation actions and strategies, including identifying resources to assist with implementation, conducting feasibility studies as needed for specific actions, and continuing to convene the appropriate actors in collaborative planning.

Task 6.2 Evaluate Funding Sources:

Potential federal, state, regional, and local funding sources that could be used to implement priority strategies will be summarized and catalogued.

Consideration will be given to identifying the most appropriate financing mechanism that might be needed to implement strategies related to planning, programs, and operations, potentially through existing programs and sometimes at no additional cost, or through new or expanded programs for which a budget must be found. General fund resources, fee-based special purpose funds, or state, federal, or private grants are among the main sources of funds for these types of strategies. In addition, opportunities to fund capital projects, which, by and large, require a level of funding that is a few orders of magnitude greater than planning-level, programmatic, or operational strategies, will also be identified. Depending on the strategy, funding may come from the private sector (individuals, a development company, or professional or philanthropic organizations), the public sector, or a cooperative effort among public and private actors.

Task 6.3 Strategies for Incorporation in the Sustainable Communities Strategy:

Priority adaptation strategies will be identified for inclusion in Plan Bay Area, the region's Sustainable Community Strategy. This task will be achieved through ongoing partnerships, including the PMT, in coordination with BARG agency members and partners. Integration of the strategies identified in this project into long-range planning efforts is critical to ensuring outcomes are implemented in a manner that supports the region's climate protection, economic, equity and prosperity goals.

Task 6.4 Develop Final Report

A final report will be developed summarizing the assessment approach, the regional assessment framework, the development of adaptation strategies and evaluation criteria, and the implementation and funding options that were identified. The report will include a description of how the PMT engaged the RWG as well as the public in reviewing and evaluating the suite of strategies identified.

Responsible Party: PMT, with limited Consultant participation

Task Deliverable

6.1: Implementation Recommendations

6.2: List of Potential Sources of Funding

6.3: Strategies for Incorporation in the Sustainable Communities Strategy

6.4: Final Report

Task 7. Quarterly Progress Reports and Invoicing

MTC shall submit Quarterly Progress Reports to Caltrans and regular invoices as work is completed. The schedule and process for invoicing will be further discussed as part of the first PMT meeting, be included in the Project Charter and possibly refined after the consultant selection.

Task 7.1 Quarterly Progress Reports:

Quarterly progress reports will be provided to Caltrans.

Task 7.2 Regular Invoicing:

Regular invoices will be submitted to Caltrans as work is completed and will be based on the final scope of work developed by the PMT and in coordination with the Consultant.

Responsible Party: MTC with PMT participation

Task Deliverable

7.1: Quarterly Reporting to Ca/trans

7.2: Regular Invoicing

APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

MTC’s commissioners include:

Alicia C. Aguirre
Tom Azumbrado
Jeannie Bruins
Damon Connolly
Dave Cortese
Carol Dutra-Vernaci
Dorene M. Giacomini

Federal D. Glover
Scott Haggerty
Anne W. Halsted
Nick Josefowitz
Sam Liccardo
Jake Mackenzie
Alfredo Pedroza

Julie Pierce
Bijan Sartipi
Libby Schaaf
Warren Slocum
James P. Spering
Amy R. Worth

- 1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any MTC commissioner in the 12 months preceding the date of the issuance of this request for qualifications?

YES NO

If yes, please identify the commissioner: _____

- 2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any MTC commissioners in the three months following the award of the contract?

YES NO

If yes, please identify the commissioner: _____

Answering yes to either of the two questions above does not preclude MTC from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

APPENDIX D, MTC STANDARD CONSULTANT CONTRACT**PROFESSIONAL SERVICES AGREEMENT**Between **METROPOLITAN TRANSPORTATION COMMISSION**And **INSERT NAME OF CONSULTANT**For **CALTRANS REGIONAL PLANNING GRANT: A RESILIENT
TRANSPORTATION SYSTEM FOR SAFE AND SUSTAINABLE COMMUNITIES**

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made and entered into as of the **xx** day of **Month**, 20____, by and between the Metropolitan Transportation Commission (herein called “MTC”), a regional transportation planning agency established pursuant to California Government Code § 66500, and **INSERT NAME OF CONSULTANT**, (herein called “CONSULTANT”), a **PICK ONE OF THE FOLLOWING: partnership, _____[state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the State of _____.**

RECITALS

WHEREAS, MTC in cooperation with the Bay Area Regional Collaborative (BARC), Caltrans District 4, and the Bay Conservation Development Commission (BCDC), intends to engage the services of an outside CONSULTANT in assessing, communicating, and responding to the risks posed by current and future flooding, and is at the forefront in advancing new and evolving approaches that are responsive to new information, data, science and changing conditions. (herein called the “Project”); and

WHEREAS, the services required for the Project cannot be performed satisfactorily by the officers and employees of MTC; and

WHEREAS, MTC has obtained federal funds from the United States Department of Transportation (“U.S. DOT”) to assist in financing the Project, and the federally-required clauses in Attachment H, Federally-Required Clauses, attached hereto and incorporated herein, apply to the Project; and

WHEREAS, the parties hereto now wish to enter into this Agreement pursuant to which CONSULTANT will render professional services in connection with the Project as hereinafter provided;

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

A general description of the tasks to be required of CONSULTANT is included in this Agreement as Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. All required services shall be authorized by Task Order. All services described in a duly executed Task Order are hereby incorporated into the Agreement upon their execution. All Task Orders shall be developed according to the process established in Attachment A-1, Task Order Process, attached hereto and incorporated herein, and should include, at a minimum, a completed form as shown in Attachment A-2, Task Order Form.

CONSULTANT agrees to perform or secure the performance of all specified services in their entirety with respect to fully executed Task Orders within the Maximum Payment specified in Article 3. Allison Brooks (herein called “MTC Project Manager”) is responsible for communication with CONSULTANT and the administration of this Agreement. MTC’s Executive Director or designated representative may substitute a new MTC Project Manager by written notice to CONSULTANT.

CONSULTANT’s point of contact and the individual authorized to communicate to MTC on behalf of CONSULTANT is INSERT NAME OF CONSULTANT PROJECT MANAGER (“CONSULTANT Project Manager”). A change in the CONSULTANT Project Manager requires MTC’s prior written approval.

In the performance of its services, CONSULTANT represents that it has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services, and CONSULTANT represents that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

1.1 PROGRESS REPORTS

CONSULTANT shall provide MTC with progress reports according to the schedule and form approved by the MTC Project Manager.

1.2 SUBMISSION OF CONTRACT DOCUMENTS

To the extent requested by the MTC Project Manager, CONSULTANT shall submit communications and required documentation, including but not limited to invoices, requests for contract modifications, and information on payments received and made to subconsultants, subconsultant utilization, and if applicable, certified payrolls, to the MTC PROJECT MANAGER or his or her designee via a one or more web-based systems designated by MTC to which MTC will provide CONSULTANT with system access. MTC may withhold payment of invoices pending receipt of such communications and required documentation via the

applicable web-based system.

2. PERIOD OF PERFORMANCE

CONSULTANT's services hereunder shall commence on or after _____, 20__, and shall be completed no later than _____, 20__, unless extended by a duly executed amendment or earlier terminated, as hereinafter provided. CONSULTANT's services shall be performed in accordance with the schedule included in each signed Task Order.]

3. COMPENSATION AND METHOD OF PAYMENT

Subject to duly executed amendments, MTC will pay CONSULTANT for its services as described in duly executed Task Orders a total amount, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subconsultants' costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee, not to exceed [**SPELL OUT AMOUNT IN WHOLE DOLLARS (\$_____)**] ("Maximum Payment"). MTC shall make payments to CONSULTANT in accordance with the provisions described in Attachment C, Compensation and Method of Payment, attached hereto and incorporated herein by this reference.

All invoices shall be submitted electronically via email to MTC at acctpay@mtc.ca.gov or in writing to:

Attention: Accounting Section
Metropolitan Transportation Commission
Bay Area MetroCenter
375 Beale Street, Suite 800
San Francisco, CA 94105

Payment shall be made by MTC within thirty (30) days of receipt of an acceptable invoice, approved by the MTC Project Manager or a designated representative.

4. KEY PERSONNEL

The key personnel to be assigned to this work by CONSULTANT and, if applicable, their hourly rates and the estimated hours to be supplied by each are set forth in Attachment D, Key Personnel Assignments, attached hereto and incorporated herein by this reference. Substitution of any of the personnel named in Attachment D or a decrease in the hours provided to the project by such personnel of more than 10% requires the prior written approval of the MTC Project Manager or a designee. CONSULTANT shall maintain records documenting compliance with this Article, and such records shall be subject to the audit requirements of Article 15.

CONSULTANT agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. MTC reserves the right to direct removal of any individual, including key personnel, assigned to this work.

5. AMENDMENTS

MTC reserves the right to request changes in the services to be performed by CONSULTANT. All such changes shall be incorporated in written amendments that specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the Executive Director or a designated representative and CONSULTANT and specifically identified as amendments to the Agreement. The MTC Project Manager is not a designated representative, for purposes of approving an amendment.

6. TERMINATION

A. Termination for Convenience. MTC may terminate this Agreement for convenience, in whole or in part, at any time by written notice to CONSULTANT. Upon receipt of notice of termination, CONSULTANT shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to MTC. For terminated deliverables-based Task Orders, CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed 3%, plus reasonable termination costs, not to exceed the amount payable for such deliverables. For terminated time-and-materials Task Orders, CONSULTANT shall be paid for hours worked, plus authorized expenses and reasonable termination costs, not to exceed the maximum amount payable under the terminated Task Order. If CONSULTANT has any property in its possession belonging to MTC, CONSULTANT will account for the same, and dispose of it in the manner MTC directs. Except as provided above, MTC shall not in any manner be liable for CONSULTANT's actual or projected lost profits had CONSULTANT completed the services required by this Agreement.

B. Termination for Default. If CONSULTANT does not deliver the work products specified in this Agreement in accordance with the delivery schedule or fails to perform in the manner called for in the Agreement, or if CONSULTANT fails to comply with any other material provision of the Agreement, MTC may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on CONSULTANT, setting forth the manner in which CONSULTANT is in default. If CONSULTANT does not cure the breach or describe to MTC's satisfaction a plan for curing the breach within the fifteen (15) day period, MTC may terminate the Agreement for default. In the event of such termination for default, CONSULTANT will be entitled to be reimbursed only for

work performed in full compliance with the contract requirements as follows: For terminated deliverables-based Task Orders, CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables. For terminated time-and-materials Task Orders, CONSULTANT shall be paid for hours worked, plus authorized expenses, not to exceed the maximum payable under the terminated Task Order. Such reimbursement will be offset by any costs incurred by MTC to complete work required under the Agreement. In no event shall MTC be required to reimburse CONSULTANT for any costs incurred for work causing or contributing to the default. If CONSULTANT has any property in its possession belonging to MTC, CONSULTANT will account for the same, and dispose of it in the manner MTC directs. MTC shall not in any manner be liable for CONSULTANT's actual or projected lost profits had CONSULTANT completed the services required by this Agreement.

C. If it is determined by MTC that CONSULTANT's failure to perform resulted from unforeseeable causes beyond the control of CONSULTANT, such as a strike, fire, flood, earthquake or other event that is not the fault of, or is beyond the control of CONSULTANT, MTC, after setting up a new delivery or performance schedule, may allow CONSULTANT to continue work, or treat the termination as a termination for convenience.

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

CONSULTANT shall, at its own expense, obtain and maintain in effect at all times for the duration of this Agreement the types of insurance and financial security listed in Attachment E, Insurance and Financial Security (Bond) Provisions, attached hereto and incorporated herein, against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement. All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better.

8. INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor and not an employee or agent of MTC and has no authority to contract or enter into any agreement in the name of MTC. CONSULTANT has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by CONSULTANT who are assisting in the performance of services under this Agreement. CONSULTANT shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. CONSULTANT shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

9. INDEMNIFICATION

To the maximum extent permitted by law, CONSULTANT shall indemnify, keep and hold harmless MTC and those entities (if any) identified as additional insureds in Attachment E, Insurance and Financial Security (Bond) Provisions, and their commissioners, directors, officers, agents, and employees (“MTC Indemnified Parties”) against any and all demands, claims, suits or actions arising out of any of the following:

- A. Any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be alleged to have occurred, caused by any breach of the Agreement or negligent act or omission or willful misconduct of CONSULTANT or its officers, employees, subconsultants or agents or any of them, arising from, under or in connection with this Agreement; or
- B. Any allegation that materials or services provided by CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

CONSULTANT further agrees to defend any and all such claims, actions, suits or other legal proceedings and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against any of the MTC Indemnified Parties, CONSULTANT shall, at its expense, satisfy and discharge the same.

The provisions set forth in this Article are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable. This indemnification shall survive termination or expiration of this Agreement.

10. DATA TO BE FURNISHED BY MTC

All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“MTC Data”) made available to CONSULTANT by MTC for use by CONSULTANT in the performance of its services under this Agreement shall remain the property of MTC and shall be returned to MTC at the completion or termination of this Agreement. No license to such MTC Data, outside of the Scope of Work of the Project, is conferred or implied by CONSULTANT’s use or possession of such MTC Data. Any updates, revisions, additions or enhancements to such MTC Data made by CONSULTANT in the context of the Project shall be the property of MTC and subject to the provisions of Article 11.

11. OWNERSHIP OF WORK PRODUCTS

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products (“Work Products”) prepared or assembled and furnished to MTC by CONSULTANT or its subconsultants pursuant to this Agreement shall be and are the property of MTC. MTC shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of CONSULTANT or in the hands of any subconsultant upon completion or termination of the work shall be immediately delivered to MTC. CONSULTANT hereby assigns to MTC ownership of any and all rights, title and interest in and to such Work Products, including ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the Work Product. CONSULTANT also agrees to execute all papers necessary for MTC to perfect its ownership of the rights in the Work Product. Notwithstanding the above, “Work Products” are not intended nor shall they be construed to include CONSULTANT’S pre-existing intellectual property secured, developed, written, or produced by CONSULTANT prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; CONSULTANT shall retain all right, title and interest in any such pre-existing intellectual property.

CONSULTANT shall be responsible for the preservation of any and all such Work Products prior to transmittal to MTC, and CONSULTANT shall replace any such Work Products as are lost, destroyed, or damaged while in its possession without additional cost to MTC.

CONSULTANT represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

12. SUBCONTRACTS

[FOR AGREEMENTS WITH SUBCONSULTANTS AT OUTSET]

A. Subconsultants approved by MTC for subcontract work under this Agreement are listed in Attachment G, Subconsultant List, attached hereto and incorporated herein by this reference. Any subconsultants must be engaged under written contract with CONSULTANT with provisions allowing CONSULTANT to comply with all requirements of this Agreement, including without limitation Article 11, OWNERSHIP OF WORK PRODUCTS. Failure of a subconsultant to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of CONSULTANT. Any substitution of subconsultants

listed in Attachment G must be approved in writing by MTC's Project Manager in advance of assigning work to a substitute subconsultant.

[FOR AGREEMENTS WITH NO SUBCONSULTANTS AT OUTSET]

A. No subconsultants are currently approved by MTC for work under this Agreement. In advance of the assignment of any work to a subconsultant, such subconsultant must be approved in writing by the MTC Project Manager and engaged under written contract with CONSULTANT with provisions allowing CONSULTANT to comply with all requirements of this Agreement, including without limitation Article 11, OWNERSHIP OF WORK PRODUCTS. Failure of a subconsultant to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of CONSULTANT.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between MTC and any subconsultants, and no subcontract shall relieve CONSULTANT of his/her responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to MTC for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultants is an independent obligation from MTC's obligation to make payments to CONSULTANT.

C. Applicable provisions of this Agreement shall be included in any subcontract or subconsultant agreement in excess of \$25,000 entered into under of this Agreement.

13. ASSIGNMENT OF AGREEMENT

CONSULTANT shall not assign this Agreement, or any part hereof without prior express written consent of the MTC Project Manager or a designated representative, and any attempt thereat shall be void and unenforceable.

14. RECORDS

CONSULTANT agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. CONSULTANT further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer. Any conflicting language regarding retention of records contained in Attachment H, Federally-Required Clauses, shall supersede this Article.

15. AUDITS

CONSULTANT shall permit MTC and MTC's authorized representatives to have access to CONSULTANT's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 14. CONSULTANT shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

CONSULTANT further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subconsultant agrees that MTC or any of MTC's duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subconsultant for the term specified above. Any conflicting language regarding audits contained in Attachment H, Federally-Required Clauses, shall supersede this Article.

16. NOTICES

Except for invoices submitted by CONSULTANT pursuant to Article 3, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

To MTC:	Attention: Allison Brooks Executive Director, Bay Area Regional Collaborative c/o Metropolitan Transportation Commission 375 Beale Street, Suite 800 San Francisco, CA 946105 Email: abrooks@mtc.ca.gov
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To CONSULTANT:	Attention: Insert Name of Appropriate Person Consultant's name Consultant's address Consultant's address Email: X
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17. SOLICITATION OF CONTRACT

CONSULTANT warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than bona fide

employees working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, MTC shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from CONSULTANT's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

18. PROHIBITED INTERESTS

CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree or have the potential of conflicting with the performance of services required under the Agreement or the impartial rendering of assistance or advice to MTC. CONSULTANT further covenants that in the performance of the Agreement no person having any such interest shall be employed.

No member, officer, employee or agent of MTC, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, CONSULTANT further covenants that it has made a complete disclosure to MTC of all facts of which CONSULTANT is aware upon due inquiry bearing upon any possible interest, direct or indirect, that it believes any member, officer, agent or employee of MTC (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by MTC.

18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

CONSULTANT shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

CONSULTANT shall not engage the services of any subconsultant or independent contractor on any work related to this Agreement if the subconsultant or independent contractor, or any

employee of the subconsultant or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONSULTANT shall immediately provide MTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, MTC becomes aware of an organizational conflict of interest in connection with CONSULTANT's performance of the work hereunder, MTC shall similarly notify CONSULTANT. In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by MTC, MTC will consider the conflict presented and any alternatives proposed and meet with CONSULTANT to determine an appropriate course of action. MTC's determination as to the manner in which to address the conflict shall be final.

Failure to comply with this section may subject CONSULTANT to damages incurred by MTC in addressing organizational conflicts that arise out of work performed by CONSULTANT, or to termination of this Agreement for breach.

19. LAWS AND REGULATIONS

CONSULTANT shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of any such government, including but not limited to MTC, that relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations and procedural requirements that are imposed on MTC as a recipient of federal or state funds are hereby in turn imposed on CONSULTANT. Attachment H, Federally Required Clauses, and its parts, and Attachment I, State Required Clauses, and its parts, are attached hereto and incorporated herein by this reference.

20. CLAIMS OR DISPUTES

CONSULTANT shall be solely responsible for providing timely written notice to MTC of any claims for additional compensation and/or time in accordance with the provisions of the Agreement. It is MTC's intent to investigate and attempt to resolve any CONSULTANT claims before CONSULTANT has performed any disputed work. Therefore, CONSULTANT's failure to provide timely notice shall constitute a waiver of CONSULTANT's claims for additional compensation and/or time.

CONSULTANT shall not be entitled to the payment of any additional compensation for

any cause, including any act, or failure to act, by MTC, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given MTC due written notice of a potential claim. The potential claim shall set forth the reasons for which CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

Such notice shall be given to MTC prior to the time that CONSULTANT has started performance of the work giving rise to the potential claim for additional compensation.

If there is a dispute over any claim, CONSULTANT shall continue to work during the dispute resolution process in a diligent and timely manner as directed by MTC, and shall be governed by all applicable provisions of the Agreement. CONSULTANT shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached that resolves CONSULTANT's claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to CONSULTANT's claim, they may choose to pursue dispute resolution pursuant to Article 24, DISPUTE RESOLUTION, or MTC may terminate the Agreement.

21. REMEDIES FOR BREACH

In the event CONSULTANT fails to comply with the requirements of the Agreement in any way, MTC reserves the right to implement administrative remedies that may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

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

22. TEMPORARY SUSPENSION OF WORK

MTC, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as MTC may deem necessary. The suspension may be due to the failure on the part of CONSULTANT to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of CONSULTANT. CONSULTANT shall comply immediately with the written order of MTC to suspend the work wholly or in part. The

suspended work shall be resumed when CONSULTANT is provided with written direction from MTC to resume the work.

If the suspension is due to CONSULTANT's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of CONSULTANT, all costs shall be at CONSULTANT's expense and no schedule extensions will be provided by MTC.

In the event of a suspension of the work, CONSULTANT shall not be relieved of CONSULTANT's responsibilities under this Agreement, except the obligations to perform the work that MTC has specifically directed CONSULTANT to suspend under this section.

If the suspension is not the responsibility of CONSULTANT, suspension of all or any portion of the work under this Section may entitle CONSULTANT to compensation and/or schedule extensions subject to the Agreement requirements.

23. WARRANTY OF SERVICES

A. In the performance of its services, CONSULTANT represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services, and that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing. In addition, CONSULTANT shall provide such specific warranties as may be set forth in specific Task Orders as agreed upon by the parties.]

B. In the event that any services provided by CONSULTANT hereunder are deficient because of CONSULTANT's or a subconsultant's failure to perform said services in accordance with the warranty standards set forth above, MTC shall report such deficiencies in writing to CONSULTANT within a reasonable time. MTC thereafter shall have:

1. The right to have CONSULTANT re-perform such services at CONSULTANT's expense; or
2. The right to have such services done by others and the costs thereof charged to and collected from CONSULTANT if within 30 days after written notice to CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to MTC that it has undertaken said re-performance; or
3. The right to terminate the Agreement for default.

CONSULTANT shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions.

24. DISPUTE RESOLUTION

A. Informal Resolution of Disputes. CONSULTANT and MTC shall use good faith efforts to resolve all disputes informally at the project manager level. In the event such efforts are unsuccessful, either party may request that MTC provide a written determination as to the proposed resolution of the dispute. Within twenty-one (21) calendar days of the request, the MTC Project Manager shall provide a written determination as to the dispute, including the basis for his or her decision. Upon CONSULTANT's written acceptance of the MTC Project Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, MTC may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the MTC Project Manager's determination.

If the MTC Project Manager's determination is not accepted by CONSULTANT, the matter shall promptly be referred to senior executives of the parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty (30) calendar days of commencement of senior management negotiations, the parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies, as set forth below.

B. Controversies Subject to Alternative Dispute Resolution. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between MTC and CONSULTANT that cannot be resolved through the informal efforts described above, may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time.

C. Other Remedies. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. CONSULTANT must file a government claim pursuant to Government Code section 910 *et seq.* in order to initiate a civil action.

D. Pending Resolution. CONSULTANT shall continue to work during the dispute resolution process in a diligent and timely manner as directed by MTC, and shall be governed by all applicable provisions of the Agreement.

E. Cost of Alternative Dispute Resolution Proceedings. Each party shall bear the costs and expenses incurred by it in connection with such alternative dispute resolution processes. The cost of any mediator or independent decision maker shall be shared equally between the parties.

F. Survival of this Article. This Article shall survive completion or termination of this Agreement, but under no circumstances shall either party call for an alternative dispute resolution of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceeding to litigate such claim or dispute under the laws of the State of California.

25. CHOICE OF LAW

All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State.

26. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover reasonable attorneys' fees, in addition to all court costs.

27. PARTIAL INVALIDITY

If any term or condition of this Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

28. BENEFIT OF AGREEMENT

The Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.

29. NO THIRD PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties.

30. ENTIRE AGREEMENT; MODIFICATION

This Agreement, including any attachments, constitutes the complete agreement between the parties and supersedes any prior written or oral communications. CONSULTANT represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both CONSULTANT and MTC. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

METROPOLITAN TRANSPORTATION
COMMISSION

NAME OF CONSULTANT

Steve Heminger, Executive Director

Insert Appropriate Name, Title

Document1

ATTACHMENT A
Preliminary Scope Of Work

Outline of Services

All services under the Agreement shall be authorized by Task Order, initiated and developed according to the detailed task order process described in Attachment A-1, Task Order Process, attached hereto and incorporated herein by this reference. Task Orders shall include, at a minimum, a detailed description of the work to be performed, a completion date for performance, a maximum payment amount, payment terms (deliverables-based or time and materials) and subconsultant participation (if any), in a completed form as shown in Attachment A-2, Task Order Form, attached hereto and incorporated herein by this reference.

Examples of some of the services to be performed by CONSULTANT are:

See RFQ, Attachment A, Preliminary Scope of Work

ATTACHMENT A-1

TASK ORDER PROCESS

Detailed Task Order Process:

Task Orders will be numbered sequentially. The period of performance shall be as set forth in the individual Task Order. The process for developing, signing and tracking task orders is summarized as follows:

Step 1 – The MTC Project Manager (“MTC PM”) prepares a draft Task Order to issue to CONSULTANT. The MTC PM may solicit feedback from CONSULTANT to facilitate drafting the Task Order.

Step 2* – CONSULTANT prepares a proposal in response to the draft Task Order. A draft Task Order, as included in this Agreement as Attachment A-2, Task Order Form, attached hereto and incorporated herein by this reference, shall be provided to CONSULTANT for review and comment.

Step 3* – The MTC PM reviews CONSULTANT’s proposal to determine if it meets the objectives of the draft Task Order and if CONSULTANT’s proposed costs are reasonable. The MTC PM may solicit early feedback from the MTC Deputy Executive Director at this time, if necessary. Any changes to the draft Task Order deemed appropriate by MTC shall be incorporated in a draft Final Task Order.

Step 4* – The MTC PM forwards the draft Final Task Order to the MTC Contract Administrator for review and approval. Once approved, the MTC PM forwards two copies of the Task Order to the MTC Deputy Executive Director, for review and approval. The MTC Deputy Executive Director signs both copies of a Final Task Order to signify approval and returns them to the MTC PM.

Step 5 – The MTC PM sends both copies of the signed Final Task Order to CONSULTANT, who signs both copies and returns one to the MTC PM.

Step 6 – The MTC PM sends one copy of the fully executed Task Order to the MTC or MTC Task Lead who initiates work, and sends another copy to MTC Finance to encumber funds against the Task Order. The MTC PM keeps the original fully-executed Task Order for the official project record.

Step 7 – Any services added to the Agreement by a Task Order shall be subject to all applicable conditions of the Agreement. Revisions to Task Orders shall require written approval by both the MTC Deputy Executive Director and CONSULTANT. Revisions to Task Orders shall require written approval by both the MTC Deputy Executive Director and CONSULTANT.

Step 8 – The MTC PM is responsible for overseeing the successful conclusion of the Task Order, and will manage the progress of the work, track invoices against the Task Order budget, and track milestone completion against the Task Order schedule.

Step 9 – Once the MTC PM determines the Task Order is complete, the MTC PM will send written notification to CONSULTANT that the Task Order is complete and that all associated invoices are due to MTC within 30 days. Any balance of budget is made available to spend on future task orders at the MTC PM’s discretion.

Step 10 – The MTC PM will annually assess the need for a Contract audit.

**The MTC Project Manager may revise the Task Order and/or CONSULTANT may be asked to revise the proposal based on feedback received during Steps 2 through 4.*

ATTACHMENT A-2

Task Order Form

1. Task Order No. (include FY)	
2. Title of Task:	
3. MTC Task Lead (if different from MTC Project Manager):	
4. Description of work:	<i>Summarize key task expectations. For more information, see attached <u>Task Order Budget and Schedule and Detailed Description of Work (attached)</u>.</i>
5. Original Maximum Payment:	
6. Amended Maximum Payment:	<i>Include each amendment to maximum payment, by amendment number, for particular fiscal year.</i>
7. Completion Date:	Date Schedule attached.
8. Payment terms:	<i>Check the one that applies (see below for more information):</i> <input type="checkbox"/> Time and Materials <input type="checkbox"/> Deliverables

9. Payment Terms [*complete A for Task Orders including one or more deliverables-based payments or B for Time and Materials Task Orders.*]

A. Deliverables-based.

	<u>Deliverable</u>	<i>Total Cost*</i>
1.		\$1
2.		\$1
3.		\$1
4.		\$1
5.		\$1
6.		\$1
7.		\$1
	Total:	\$7.00

*Due upon satisfactory completion as determined by the MTC Project Manager.

B. Time and Materials

Specify hourly rate for applicable personnel and include estimate of expenses.

	<u>Personnel/Expense</u>	<u>Duties</u>	<u>Rate</u>	<u>Est. Hours</u>	<u>Total Cost</u>
1.			\$		\$1
2.			\$		\$1
3.			\$		\$1
4.			\$		\$1
5.			\$		\$1
Total:					\$5.00

<u>Activity</u>	<u>Lead</u>	<u>Estimated Amount Budgeted</u>
		\$1
		\$1
		\$1
		\$1
		\$1
		\$1
TOTAL MAXIMUM PAYMENT		\$6.00

METROPOLITAN TRANSPORTATION
COMMISSION

CONSULTANT

Insert name and title of section director
Date:

Insert name and title of authorized individual
Date:

Task Order Schedule

<u>Deliverable/Milestone</u>		<u>Due Date</u>
		Date

Detailed Description of Work

Task Order #: Title

1. Description of subtask 1.
Deliverable – deliverable name
2. Description of subtask 2.
Deliverable – deliverable name
3. Description of subtask 3.
Deliverable – deliverable name
4. Etc.

ATTACHMENT B

Project Schedule

Task #	Work to be Performed/Deliverables (#)	Completion Date

CONSULTANT's services shall be performed in accordance with the schedule included in each duly executed Task Order.

ATTACHMENT C**Compensation and Method of Payment**

A. Compensation. CONSULTANT shall be compensated for its work as specified in signed Task Orders. All Task Orders shall be developed according to the process established in Attachment A-1, Task Order Process, attached hereto and incorporated herein, and should include, at a minimum, a completed form as shown in Attachment A-2, Task Order Form. Payment terms may be based on acceptance of agreed-upon deliverables or upon time and materials reimbursement, depending on the requirements of each Task Order. For time and materials-based payment of Task Orders, labor rates in Attachment D, Key Personnel Assignments, shall apply. The hourly rates in Attachment D include all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, equipment, materials and supplies. Said hourly rates shall remain in effect for the term of the Agreement, unless MTC's prior written authorization is obtained for any changes. In no event shall the total compensation to be paid CONSULTANT under the Agreement exceed the Maximum Payment specified in Article 3 of the Agreement.

B. Expenses. For time and materials Task Orders, MTC will reimburse CONSULTANT for all expenses deemed reasonable and necessary by MTC incurred by CONSULTANT in the performance of this Agreement. Such reimbursement shall include travel and personal expenses incurred by employees or agents of all CONSULTANTS in accordance with 48 Code of Federal Regulations Part 31 or Office of Management and Budget Circular A-122, as applicable.

C. Method of Payment. CONSULTANT shall submit invoices for services rendered no more frequently than on a monthly basis. Invoices shall identify work for which payment is requested by Task Order number (including fiscal year). All invoices will be dated, numbered in serial order, and signed by CONSULTANT.

For Task Orders authorizing payment on the basis of satisfactory deliverables, CONSULTANT shall specify each deliverable for which payment is requested, the amount requested, and the total amount paid to date under the Task Order.

For Task Orders authorizing time and materials payment, CONSULTANT shall submit invoices for services rendered on a monthly basis, covering fees and expenses for a single calendar month. Each invoice shall specify the work performed, hours worked, and amount due

(by personnel), authorized expenses (with receipts for such expenses), the total amount claimed under the invoice and the amount paid to date under the Task Order.

ATTACHMENT D

Key Personnel Assignments

	<u>Name</u>	<u>Rate/hour</u>	<u>Est. hours</u>	<u>Task Description</u>
1.		\$xx		
2.				
3.				
4.				
5.				
6.				
7.				
8.				

* Applicable to development of payment provisions in amendments only.

ATTACHMENT E

Insurance and Financial Security (Bond) Provisions

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover CONSULTANT's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that CONSULTANT authorizes to work under this Agreement (hereinafter referred to as "Agents.") CONSULTANT shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

CONSULTANT is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, CONSULTANT shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONSULTANT's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event CONSULTANT or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that CONSULTANT's insurance be primary without right of contribution from MTC. Prior to beginning work under this contract, CONSULTANT shall provide MTC with satisfactory evidence of compliance with the insurance requirements of this section.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONSULTANT's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as CONSULTANT is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of CONSULTANT and CONSULTANT's officers, agents, and employees and with limits of

liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, a products/completed operations aggregate liability limit of not less than \$2,000,000 and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

MTC and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Umbrella Insurance in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim.

The policy shall provide coverage for all work performed by CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of CONSULTANT. No contract or agreement between CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.

6. Property Insurance. Property Insurance covering CONSULTANT'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

B. Acceptable Insurers. All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better.

C. Self-Insurance. CONSULTANT's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

D. Deductibles and Retentions. CONSULTANT shall be responsible for payment of any deductible or retention on CONSULTANT's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that MTC seeks coverage as an additional insured under any CONSULTANT insurance policy that contains a deductible or self-insured retention, CONSULTANT shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of CONSULTANT, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONSULTANT or subconsultant is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, CONSULTANT shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, CONSULTANT shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of CONSULTANT's personnel, subconsultants, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally accepted. CONSULTANT must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, CONSULTANT shall deliver to Ebix, MTC's authorized insurance consultant, insurance

documentation (including Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the aforementioned coverages. Such evidence of insurance shall make reference to all provisions and endorsements referred to above and shall be signed by the authorized representative of the Insurance Company shown on the insurance documentation. **The Project name shall be clearly stated on the face of each Certificate of Liability Insurance and/or Evidence of Property Insurance.**

CONSULTANT shall submit certificates of insurance to:

Ebix BPO

P.O. Box 100085-1H

Duluth, GA 30096-9302

or

Email to mtc@prod.certificatesnow.com

or

Fax to 1-888-617-2309

2. Not Used

3. ADDITIONAL INSURED

The following entities are to be named as Additional Insureds under applicable sections of this Attachment E and as MTC Indemnified Parties, pursuant to Article 9 of the Agreement.

Bay Area Regional Collaboration (BARC)

Bay Conservation Development Commission (BCDC)

Caltrans District 4

ATTACHMENT F

Not Used

ATTACHMENT G
Subconsultant List

	<u>Name/Address of Subconsultant</u>	<u>Amount of Subcontract</u>	<u>Description of Work</u>
1.			
2.			
3.			
4.			
5.			
6.			

LIST "None" ABOVE IF NO SUBCONTRACTORS ARE BEING USED.

ATTACHMENT H**Federally Required Clauses****1. EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and 49 U.S.C. § 5332 for FTA-funded projects CONSULTANT agrees that it will not, on the grounds of race, religious creed, color, national origin, age, physical disability, sex, discriminate or permit discrimination against any employee or applicant for employment.

2. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

A. CONSULTANT or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation-assisted contracts. Failure by CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as MTC deems appropriate.

B. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Proposers who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

C. DBE goals for this Agreement will be determined at the time of Task Order Issuance. If a Task Order issued under this Agreement has a DBE goal, CONSULTANT must meet the DBE goal by committing DBE participation or document a good faith effort to meet the goal. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

D. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this Agreement that may result in the termination of this Agreement or such other remedy as the local agency deems appropriate.

E. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.2.1. Performance of DBE Consultant and other DBE Subconsultants/Suppliers

A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing; and other relevant factors.

B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

2.2. Prompt Payment of Funds Withheld to Subconsultants

A. In the event that MTC withholds a portion of the payment from CONSULTANT as retainage, CONSULTANT, or subconsultant (if applicable), shall return all monies withheld in retention from a subconsultant within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime contractors and subconsultants.

B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

2.3. DBE Records

A. CONSULTANT shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime CONSULTANTs shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

B. A report on the Monthly Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts in the form set forth in Attachment H-3, attached hereto and incorporated herein, must be included with all invoices. MTC may withhold payment pending receipt of such report.

C. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form attached as Attachment H-4, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), attached hereto and incorporated herein by this reference, certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the MTC Project Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25% of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to the Contract Manager.

2.4. DBE Certification and Decertification Status

If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to the Agency's Contract Manager within 30 days.

3. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

CONSULTANT agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d)) and the regulations of the Department of Transportation issued thereunder (49 CFR Part 21).

4. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

CONSULTANT agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. § 5310(f); and their implementing regulations.

5. STATE ENERGY CONSERVATION PLAN

CONSULTANT shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321).

6. ALLOWABILITY OF COSTS

CONSULTANT shall comply with the cost principles (as applicable) in Office of Management and Budget (OMB) Circulars A-87, or A-122, or 48 Code of Federal Regulations Chapter 1 Part 31, or 49 Code of Federal Regulations Part 18, or in 2 Code of Federal Regulations Parts 200 and 1201, as applicable.

7. RELEASE OF FUNDS WITHHELD FROM SUBCONSULTANTS

CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by MTC.

8. LICENSE FOR FEDERAL GOVERNMENT PURPOSES

FTA/FHWA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) the copyright in any work developed under this Agreement; and (b) any rights of copyright to which MTC or CONSULTANT purchases ownership under this Agreement.

9. IDENTIFICATION OF DOCUMENTS

All reports and other documents completed as part of this Agreement shall carry the following notation on the front cover or title page:

"The preparation of this report has been financed in part by grants from the Federal Transit Administration, U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation."

10. RECORDS

CONSULTANT agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. CONSULTANT further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of three (3) years from submission of final expenditure report; four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer. Copies of CONSULTANT's audits, if any, performed during the course of Project development and at Project completion shall be forwarded to MTC no later than one hundred eighty (180) days after fiscal year end close.

11. AUDITS

CONSULTANT further agrees to include in all its subcontracts hereunder a provision to the effect that the subconsultant agrees that MTC, or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subconsultant for the term specified above. The term "subcontract" as used in this clause excludes agreements not exceeding \$25,000.

CONSULTANT agrees to grant MTC, the U.S. DOT, FTA or FHWA, as applicable, the Comptroller General of the United States, the State of California, and their authorized representatives access to CONSULTANT's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 14. CONSULTANT shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time. If, as a result of any audit, it is determined by the auditor that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, CONSULTANT agrees to reimburse MTC for those costs within sixty (60) days of written notification by MTC.

CONSULTANT further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subconsultant agrees that MTC the U.S. DOT, FTA or FHWA, as applicable, the Comptroller General of the United States, the State of California, and their

authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subconsultant for the term specified above.

12. FLY AMERICA REQUIREMENTS.

CONSULTANT agrees to comply with 49 U.S.C. 40118 (the “Fly America Act”) in accordance with the General Services Administration's regulations at 41 CFR Part 301 - 10, which provide that recipients and subrecipients of Federal funds and their consultants are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act. CONSULTANT shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements, if used. CONSULTANT agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

13. ENERGY CONSERVATION.

CONSULTANT agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act, 49 U.S.C. §§ 6321 et seq.

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

A. CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, CONSULTANT further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on CONSULTANT to the extent the Federal Government deems appropriate.

- B. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on CONSULTANT, to the extent the Federal Government deems appropriate.
- C. CONSULTANT agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor/subconsultant who will be subject to the provisions.

15. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

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

16. DEBARMENT

CONSULTANT certifies that neither it, nor any of its participants, principals or subconsultants is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 2 CFR Parts 180 and 1200, by any Federal agency or department.

17. CLEAN AIR AND WATER POLLUTION ACTS

CONSULTANT agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7501 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

18. LOBBYING

CONSULTANT agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 United States Code §1352 and 49 C.F.R. Part 20.

ATTACHMENT H-1
EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: Metropolitan Transportation Commission 2. Contract DBE Goal: TBD at Task Order Issuance
 3. Project Description: Caltrans Regional Planning Grant: A Resilient Transportation System for Safe and Sustainable Communities
 4. Project Location: San Francisco Bay Area
 5. Consultant's Name: TBD 6. Prime Certified DBE:

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
TBD	TBD	TBD	TBD
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION	TBD %
17. Local Agency Contract Number:			
18. Federal-Aid Project Number: FTA 5304 Sustainable Communities			
19. Proposed Contract Execution Date:			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. 20. Local Agency Representative's Signature _____ 21. Date _____ 22. Local Agency Representative's Name Michael Brinton 23. Phone _____ 24. Local Agency Representative's Title <u>Contracts Specialist</u>		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 12. Preparer's Signature _____ 13. Date _____ _____ 14. Preparer's Name _____ _____ 15. Phone _____ _____ 16. Preparer's Title _____	

DISTRIBUTION: Original – Included with consultant’s proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654- 3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

1. **Local Agency** - Enter the name of the local or regional agency that is funding the contract.
2. **Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. **Project Location** - Enter the project location as it appears on the project advertisement.
4. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
5. **Consultant's Name** - Enter the consultant's firm name.
6. **Prime Certified DBE** - Check box if prime contractor is a certified DBE.
7. **Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
8. **DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
9. **DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
10. **DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
11. **Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
12. **Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
13. **Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
14. **Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
15. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
16. **Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form. LOCAL AGENCY SECTION
17. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
18. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
19. **Proposed Contract Execution Date** - Enter the proposed contract execution date.
20. **Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
21. **Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
22. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
23. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
24. **Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

ATTACHMENT H-2

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: Metropolitan Transportation Commission 2. Contract DBE Goal: TBD at Task Order Issuance
3. Project Description: Caltrans Regional Planning Grant: A Resilient Transportation System for Safe and Sustainable Communities
4. Project Location: San Francisco Bay Area
5. Consultant's Name: _____ 6. Prime Certified DBE: 7. Total Contract Award Amount: _____
8. Total Dollar Amount for **ALL** Subconsultants: _____ 9. Total Number of **ALL** Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
TBD	TBD	TBD	TBD
Local Agency to Complete this Section			\$
20. Local Agency Contract Number:	14. TOTAL CLAIMED DBE PARTICIPATION		%
21. Federal-Aid Project Number: FTA 5304 Sustainable Communities			
22. Contract Execution Date:			
<p>Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.</p> <p>23. Local Agency Representative's Signature _____</p> <p>24. Date _____</p> <p>25. Local Agency Representative's Name <u>Michael Brinton</u></p> <p>26. Phone _____</p> <p>27. Local Agency Representative's Title <u>Contracts Specialist</u></p>	<p>IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.</p> <p>15. Preparer's Signature _____</p> <p>16. Date _____</p> <p>17. Preparer's Name _____</p> <p>18. Phone _____</p> <p>19. Preparer's Title _____</p>		

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654- 3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT

CONSULTANT SECTION

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

LOCAL AGENCY SECTION

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

ATTACHMENT H-3

Monthly Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts Form

Project Name			Agency	Contract Term:	NTE Amount:	Federal Aid #:
Caltrans Regional Planning Grant: A Resilient Transportation System for Safe and Sustainable Communities			MTC		\$415,000	FTA 5304, Sustainable Communities
Prime Contractor	Contract Name	Address	City, State, Zip Code	Email	Phone	Fax

Item #	Description of Work Performed and Material Provided	Company Name, Business Address, Contact Name and Information	DBE Certification Number	Contract Payments		Date Work Completed	Date of Payment	Year to Date Payments
				Non-DBE	DBE			
				\$1	\$1			\$1
				\$1	\$1			\$1
				\$1	\$1			\$1
				\$1	\$1			\$1
				\$1	\$1			\$1
				\$1	\$1			\$1
				\$1	\$1			\$1
				\$1	\$1			\$1
Original DBE Commitment			Total: highlight + F9 = math	\$8.00	\$8.00			

BA-Black American NA-Native American
 APA-Asian Pacific American W-Women

ATTACHMENT H-4, Final Report-Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts Form

EXHIBIT 17-F FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS

1. Local Agency Contract Number		2. Federal-Aid Project Number		3. Local Agency		4. Contract Completion Date	
5. Contractor/Consultant			6. Business Address			7. Final Contract Amount	
8. Contract Item Number	9. Description of Work, Service, or Materials Supplied	10. Company Name and Business Address	11. DBE Certification Number	12. Contract Payments		13. Date Work Completed	14. Date of Final Payment
				Non-DBE	DBE		
15. ORIGINAL DBE COMMITMENT AMOUNT \$ _____				16. TOTAL			

List all first-tier subcontractors/subconsultants and DBEs regardless of tier whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that approved at the time of award, provide comments on an additional page. List actual amount paid to each entity. If no subcontractors/subconsultants were used on the contract, indicate on the form.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT

17. Contractor/Consultant Representative's Signature		18. Contractor/Consultant Representative's Name		19. Phone		20. Date	
I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED							
21. Local Agency Representative's Signature		22. Local Agency Representative's Name		23. Phone		24. Date	

DISTRIBUTION: Original – Local Agency, Copy – Caltrans District Local Assistance Engineer. Include with Final Report of Expenditures

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – FINAL REPORT-UTILIZATION OF ISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS

1. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
2. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
3. **Local Agency** - Enter the name of the local or regional agency that is funding the contract.
4. **Contract Completion Date** - Enter the date the contract was completed.
5. **Contractor/Consultant** - Enter the contractor/consultant's firm name.
6. **Business Address** - Enter the contractor/consultant's business address.
7. **Final Contract Amount** - Enter the total final amount for the contract.
8. **Contract Item Number** - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
9. **Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials provided. Indicate all work to be performed by DBEs including work performed by the prime contractor/consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
10. **Company Name and Business Address** - Enter the name, address, and phone number of all subcontracted contractors/consultants. Also, enter the prime contractor/consultant's name and phone number, if the prime is a DBE.
11. **DBE Certification Number** - Enter the DBE's Certification Identification Number. Leave blank if subcontractor is not a DBE.
12. **Contract Payments** - Enter the subcontracted dollar amount of the work performed or service provided. Include the prime contractor/consultant if the prime is a DBE. The Non-DBE column is used to enter the dollar value of work performed by firms that are not certified DBE or for work after a DBE becomes decertified.
13. **Date Work Completed** - Enter the date the subcontractor/subconsultant's item work was completed.
14. **Date of Final Payment** - Enter the date when the prime contractor/consultant made the final payment to the subcontractor/subconsultant for the portion of work listed as being completed.
15. **Original DBE Commitment Amount** - Enter the "Total Claimed DBE Participation Dollars" from Exhibits 15-G or 10-O2 for the contract.
16. **Total** - Enter the sum of the "Contract Payments" Non-DBE and DBE columns.
17. **Contractor/Consultant Representative's Signature** - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
18. **Contractor/Consultant Representative's Name** - Enter the name of the person preparing and signing the form.
19. **Phone** - Enter the area code and telephone number of the person signing the form.
20. **Date** - Enter the date the form is signed by the contractor's preparer.
21. **Local Agency Representative's Signature** - A Local Agency Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
22. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative signing the form.
23. **Phone** - Enter the area code and telephone number of the person signing the form.
24. **Date** - Enter the date the form is signed by the Local Agency Representative.

ATTACHMENT I
State Required Clauses

ATTACHMENT I-1**FAIR EMPLOYMENT PRACTICES ADDENDUM**

1. In the performance of this Agreement, CONSULTANT shall not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. CONSULTANT shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. CONSULTANT, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of the CONSULTANT'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements as appropriate.

3. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

4. CONSULTANT shall permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which CONSULTANT was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that CONSULTANT has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by CONSULTANT and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to CONSULTANT, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure CONSULTANT's breach of this Agreement.

ATTACHMENT I-2**NONDISCRIMINATION ASSURANCES**

CONSULTANT HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964” (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which CONSULTANT receives federal financial assistance from the Federal Department of Transportation. CONSULTANT HEREBY GIVES ASSURANCE THAT CONSULTANT shall promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, CONSULTANT hereby gives the following specific assurances with respect to its federal-aid Program:

1. That CONSULTANT agrees that each “program” and each “facility” as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a “program”) conducted, or will be (with regard to a “facility”) operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.
2. That CONSULTANT shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements: CONSULTANT hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.
3. That CONSULTANT shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.
4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. That where CONSULTANT receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where CONSULTANT receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That CONSULTANT shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the CONSULTANT with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates CONSULTANT for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates CONSULTANT or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which CONSULTANT retains ownership or possession of the property.

9. That CONSULTANT shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that CONSULTANT, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That CONSULTANT agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. CONSULTANT shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. CONSULTANT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of STATE assisted contracts. The California Department of

Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out the Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31 USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to CONSULTANT by STATE, acting for the U.S. Department of Transportation, and is binding on CONSULTANT, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

APPENDIX A TO ATTACHMENT I-2

During the performance of this Agreement, CONSULTANT, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

(1) **Compliance with Regulations:** CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) **Nondiscrimination:** CONSULTANT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) **Solicitations for Sub-agreements, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **Information and Reports:** CONSULTANT shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to CONSULTANT's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
- (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) **Incorporation of Provisions:** CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request STATE enter into such litigation to protect the interests of STATE, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B TO ATTACHMENT I-2

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that CONSULTANT shall accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto CONSULTANT all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto CONSULTANT and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on CONSULTANT, its successors and assigns.

CONSULTANT, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) *

(2) that CONSULTANT shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.*

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX C TO ATTACHMENT I-2

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by CONSULTANT, pursuant to the provisions of Assurance 7(a) of Attachment I-2.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add ‘as covenant running with the land’) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, CONSULTANT shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, CONSULTANT shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of CONSULTANT and its assigns.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX D TO ATTACHMENT I-2

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by CONSULTANT, pursuant to the provisions of Assurance 7 (b) of Attachment I-2.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add “as a covenant running with the land”) that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, CONSULTANT shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, CONSULTANT shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of CONSULTANT, and its assigns.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

**ATTACHMENT I-3, STATE DEPARTMENT OF TRANSPORTATION
REQUIREMENTS****Caltrans Non – Discrimination**

A. In the performance of work undertaken pursuant to this Agreement, CONSULTANT shall not, and shall affirmatively require that its contractors shall not, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave.

B. CONSULTANT shall ensure, and shall require that its contractors and all subcontractors and/or subrecipients shall ensure, that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT shall comply, and ensure that its contractors and subcontractors and/or subrecipients shall comply, with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (af), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

C. Each of CONSULTANT's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements. CONSULTANT shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under this Agreement.

D. CONSULTANT shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR Part 21, and 23 CFR Part 200 are made applicable to this Agreement by this reference. Wherever the term "Contractor" appears therein, it shall mean CONSULTANT.

E. CONSULTANT shall permit, and shall require that its contractors, subcontractors, and subrecipients will permit, access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by STATE to investigate compliance with these non-discrimination provisions.

ATTACHMENT J
“Not Used”

ATTACHMENT J-1
ADDITIONAL FEDERAL CLAUSES APPLICABLE TO PUBLIC WORKS

1. Buy America
2. Davis-Bacon Act
3. Contract Work Hours and Safety Standards Act
4. Copeland Anti-Kickback Act
5. Prompt Payment of Funds Withheld to Subcontractors

1. Buy America Requirements

Buy America – Attention is directed to the “Buy America” requirements of the surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Sections 1041(a) and 1048(a), and the regulations adopted pursuant thereto. In conformance with the law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and other coating that protects or enhances the value of steel or iron materials shall be considered a manufacturing process subject to the “Buy America” requirements. A Certificate of Compliance shall be furnished for steel and iron materials. The certificates shall specifically certify that all manufacturing processes for the materials occurred in the United States, except for the above exceptions.

The requirements imposed by the law and regulations do not prevent a minimal use of foreign steel and iron materials if the total combined cost of the materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. The Contractor shall furnish the Engineer acceptable documentation of the quantity and value of the foreign steel and iron prior to incorporation the materials into the work.

Certification requirement for procurement of steel, iron, or manufactured products.

The bidder or offer or hereby certifies that all manufacturing process for steel and iron materials occurred in the United States, except for the above exceptions.

Signature: _____
Name and Title: _____
Company Name: _____
Date: _____

2. DAVIS-BACON ACT

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

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

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

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

(2) *Withholding*. The MTC SAFE shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the MTC SAFE may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Highway Administration (FHWA) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the FHWA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the FHWA if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the FHWA, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

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

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being

maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the FHWA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees* —(i) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the

apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

(6) *Subcontracts*. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the FHWA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

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

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

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

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

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

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

(3) *Withholding for unpaid wages and liquidated damages.* The MTC SAFE shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the

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

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

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

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

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-0140
(a)(1)(ii)(C)	1215-0140
(a)(1)(iv)	1215-0140
(a)(3)(i)	1215-0140,
	1215-0017
(a)(3)(ii)(A)	1215-0149
(c)	1215-0140,
	1215-0017

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

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

3. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Contract Work Hours and Safety Standards Act - (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts** - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

4. COPELAND ANTI-KICKBACK ACT

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

5. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

APPENDIX D-1, INSURANCE REQUIREMENTS

Minimum Insurance Coverages. Consultant shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under its Agreement with MTC, placed with insurers Best’s Rating of A- or better with a Financial Size Category of VIII or better.

Yes (√)	<p>Please certify by checking the box below that required coverages will be provided within ten (10) business days of MTC’s notice to firm that it wishes to contract with the firm.</p>
—	<p><u>Workers' Compensation Insurance</u> with Statutory limits, and <u>Employer’s Liability Insurance</u> with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONSULTANT’s employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such <u>Workers Compensation & Employer’s Liability</u> may be waived, if and only for as long as CONSULTANT is a sole proprietor or a corporation with stock 100% owned by officers with no employees.</p>
—	<p><u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of CONSULTANT and CONSULTANT’s officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, a products/completed operations aggregate liability limit of not less than \$2,000,000 and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC.</p> <p>Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.</p> <p>MTC, BARC, BCDC and Caltrans District 4 and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT’s operations.</p>
—	<p><u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT’s officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability that shall not be less than \$1,000,000 combined single limit per accident.</p>
—	<p><u>Umbrella Insurance</u> in the amount of \$1,000,000 providing excess limits over Employer’s Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.</p>

<p>—</p>	<p><u>Errors and Omissions Professional Liability Insurance</u> for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim.</p> <p>The policy shall provide coverage for all work performed by CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.</p>
<p>—</p>	<p><u>Property Insurance.</u> Property Insurance covering CONSULTANT'S own business personal property and equipment to be used in performance of its Agreement with MTC, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.</p>
<p>Consultant’s obligation to provide the insurance described herein may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.</p> <p>Consultant shall be responsible for payment of any deductible or retention on Consultant’s policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.</p> <p>In the event that MTC BARC, BCDC and/or Caltrans District 4 seeks coverage as an additional insured under any Consultant insurance policy that contains a deductible or self-insured retention, Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Consultant, subconsultant, subcontractor, or any of their employees, officers or directors, even if Consultant or subconsultant is not a named defendant in the lawsuit.</p> <p>If any insurance specified above is written on a “Claims-Made” (rather than an “occurrence”) basis, then in addition to the coverage requirements above, Consultant shall:</p> <ol style="list-style-type: none"> 1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of its Agreement with MTC or the beginning of any work under such Agreement; 2. Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and 3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the work. 	

All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Consultant’s personnel, subcontractors, and equipment have been removed from MTC’s property, and the work or services have been formally accepted. Consultant must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of its Agreement with MTC.

Prior to commencement of any work hereunder, Consultant shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant hereto, including, but not limited to, liability assumed pursuant to the Indemnification section of its Agreement with MTC.

By signing below you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within ten (10) business days of MTC’s notice to firm that it wishes to contract with the firm.

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

NOTE: If you were unable to check “Yes” for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to MTC’s attention no later than closing date/time for receipt of requests for modifications/exceptions. If such modifications/exceptions are not brought to MTC’s attention consistent with the provisions of this RFQ, compliance with the insurance requirements will be assumed.

APPENDIX E – Not Used

APPENDIX F, FEDERAL REQUIREMENTS

Federally-required contract provisions are listed below and in *Appendix D*, MTC's Standard Consultant Agreement, in Attachment H and its subparts. In addition, the federal requirements in this *Appendix F* shall apply to any contract resulting from this RFQ.

Effective July, 2012, the California Department of Transportation (Caltrans) requires recipients of DOT grant funds through Caltrans to impose the following DBE utilization requirements on its consultants and contractors. Consultant's DBE participation on its Agreement with MTC will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

MTC has established Disadvantaged Business Enterprise (DBE) goal of ____% for any contract entered into as a result of this procurement.

1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other Small Businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Contractor should ensure that DBEs and other Small Businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The Proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, *Appendix F-3*, "Local Agency Consultant DBE Commitment" form and *Appendix F-4*, "Local Agency Consultant DBE Information" form shall be included in the procurement document. In order for a Proposer to be considered responsible and responsive, the Proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the Proposer must document adequate good faith efforts. All DBE

participation will be counted towards the contract goal, and all DBE participation shall be collected and reported.

Appendix F-3, “Local Agency Consultant DBE Commitment” form and *Appendix F-4, “Local Agency Consultant DBE Information”* form shall be included with the procurement document. The purpose of the forms is to collect data required under 49 CFR 26. These forms collect all DBE participation. Even if no DBE participation will be reported, the successful Proposer must execute and return the forms.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the Proposer’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE Proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - 1. The Proposer is a DBE and will meet the goal by performing work with its own forces.
 - 2. The Proposer will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
 - 3. The Proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The Proposer shall list only one subcontractor for each portion of work as defined in its SOQ and all DBE subcontractors should be listed in the bid/cost SOQ list of subcontractors.
- G. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.

- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program web site at: <http://www.dot.ca.gov/hq/bep/>.
- Click on the link in the left menu titled *Disadvantaged Business Enterprise*
 - Click on *Search for a DBE Firm* link
 - Click on *Access to the DBE Query Form* located on the first line in the center of the page
 - Searches can be performed by one or more criteria
 - Follow instructions on the screen
- C. How to Obtain a List of Certified DBEs without Internet Access: DBE Directory - If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered from the Caltrans Publications Unit at (916) 263-0822, 1900 Royal Oaks Drive, Sacramento, CA 95815-3800.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

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

**APPENDIX F-1, CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND
OTHER RESPONSIBILITY MATTERS**

(Third Party Contracts and Subcontracts over \$25,000)

Instructions for Certification:

1. By signing and submitting this SOQ, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, MTC may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to MTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29 or 2 CFR Part 180, as applicable]. You may contact MTC for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this SOQ 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 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by MTC.
6. The prospective lower tier participant further agrees by submitting this SOQ that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. 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 debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, 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 Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The

knowledge and information of a participant is not required to exceed that which does a prudent person in the ordinary course of business dealings normally possess.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, MTC may pursue available remedies including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transaction**

(1) The prospective lower tier participant certifies, by submission of this SOQ, that neither it nor its “principals” [as defined at 49 CFR Section 29.105(p) or 2 CFR Section 180.995, as applicable] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this SOQ.

Date

(signature of authorized official)

(type/print name and title)

APPENDIX F-2, CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____ hereby certify on behalf of _____ that:
(name and title of grantee official) (name of grantee)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including 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 is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 201__.

By:

(signature of authorized official)

(title of authorized official)

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

- 25. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 26. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 27. Project Location** - Enter the project location as it appears on the project advertisement.
- 28. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
- 29. Consultant's Name** - Enter the consultant's firm name.
- 30. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 31. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 32. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 33. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 34. DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 35. Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 36. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 37. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 38. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 39. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 40. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 41. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
 - 42. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
 - 43. Proposed Contract Execution Date** - Enter the proposed contract execution date.
 - 44. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
 - 45. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
 - 46. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
 - 47. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
 - 48. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.
-

APPENDIX F-4, LOCAL AGENCY CONSULTANT DBE INFORMATION

EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT

- 1. Local Agency: Metropolitan Transportation Commission
- 2. Contract DBE Goal: TBD at Task Order Issuance
- 3. Project Description: Caltrans Regional Planning Grant: A Resilient Transportation System for Safe and Sustainable Communities
- 4. Project Location: San Francisco Bay Area
- 5. Consultant's Name: _____
- 6. Prime Certified DBE:
- 7. Total Contract Award Amount: _____
- 8. Total Dollar Amount for **ALL** Subconsultants: _____
- 9. Total Number of **ALL** Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
TBD	TBD	TBD	TBD
Local Agency to Complete this Section		14. TOTAL CLAIMED DBE PARTICIPATION	\$
20. Local Agency Contract Number:	%		
21. Federal-Aid Project Number: FTA 5304 Sustainable Communities			
22. Contract Execution Date:			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. 23. Local Agency Representative's Signature _____ 24. Date _____ 25. Local Agency Representative's Name <u>Michael Brinton</u> 26. Phone _____ 27. Local Agency Representative's Title <u>Contracts Specialist</u>	IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 15. Preparer's Signature _____ 16. Date _____ 17. Preparer's Name _____ 18. Phone _____ 19. Preparer's Title _____		

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654- 3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT**CONSULTANT SECTION**

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

LOCAL AGENCY SECTION

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

APPENDIX F-5, DBE INFORMATION – GOOD FAITH EFFORTS

Federal-aid Project No. _____ Bid Opening Date _____

The _____ established a Disadvantaged Business Enterprise (DBE) goal of _____% for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the “Local Agency Bidder DBE Commitment” form indicates that the bidder has met the DBE goal. This will protect the bidder’s eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the “Local Agency Bidder DBE Commitment” form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled “Submission of DBE Commitment” of the Special Provisions:

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications:

Date of Advertisement:

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited:

Date of Initial Solicitation:

Follow Up Methods and Dates:

C. The items of work which the bidder made available to DBE firms including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Item of Work:	Bidder Normally Performs Item (Y/N):	Breakdown of Items:	Amount (\$):	Percentage of Contract:

D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs:

F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization:	Method/Date of Contact:	Results:
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H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

APPENDIX G, AUDIT AND REVIEW REQUIREMENTS

This section outlines the audit and review process for A&E contracts that at any time use state or federal funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Audits and Investigations (A&I), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected by Caltrans on a risk-based approach.

APPLICABLE STANDARDS

State and federal requirements listed below, as well as specific contract requirements, serve as the standards for audits and reviews performed. MTC consultants, and subconsultants are responsible for complying with state, federal and specific contract requirements. MTC is responsible for determining the eligibility of costs to be reimbursed to consultants. Applicable standards include, but not limited to:

- Caltrans Local Assistance Procedures Manual (LAPM);
- Project Program Supplemental Agreements;
- 23 CFR, Chapter 1, Part 172 – *Administration of Engineering and Design Related Service Contracts*;
- 48 CFR, *Federal Acquisitions Regulation Systems (FAR)*, Chapter 1 FAR, Part 31- *Contract Cost Principles and Procedures*;
- 48 CFR, Chapter 99 – *Cost Accounting Standards*, Subpart 9900;
- 49 CFR, Transportation, Subtitle A, Office of the Secretary of Transportation, Volume 1, Part 18, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government*;
- 49 CFR, Part 18.20 – *Standards for Financial Management Systems*;
- 23 USC, Part 112 – *Letting of Contracts*;
- United States Government Accountability Office, *Government Auditing Standards (GAS)*;
- Proposed contract terms and conditions.

See section 10.10 “References” of LAPM Chapter 10 available at http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/ch10-2013-10-22.pdf for links to above referenced standards.

AUDIT GUIDANCE AVAILABLE

The American Association of State Highway Officials, Uniform Audit & Accounting Guide ([AASHTO Uniform Audit & Accounting Guide](#)) or (<http://audit.transportation.org/Documents/UAAG-3%20FINAL.pdf>), which is referred to frequently in this section, is an invaluable tool to guide local agencies, consultants and certified public accountants (CPAs) through the requirements for establishing, and audits of, FAR compliant indirect cost rates (ICRs). The [AASHTO Uniform Audit & Accounting Guide](#) is used extensively as an industry guide in the audit and review process.

MTC may seek financial and accounting assistance from its own internal audit staff.

The Consultant may also seek professional guidance in selecting its independent CPA. See also the [AASHTO Uniform Audit & Accounting Guide](#), Ch 2.5 C. *Selection of the CPA Firm as Overhead Auditor* for guidance in the selection process.

Training is also offered by FHWA's National Highway Institute (see <http://www.nhi.fhwa.dot.gov/default.aspx>). Courses offered include:

- Using the AASHTO Uniform Audit & Accounting Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Uniform Audit & Accounting Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA-NHI-231029)
- Using the AASHTO Uniform Audit & Accounting Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

CONTRACTS AND CONSULTANTS SELECTED FOR AUDIT OR REVIEW

Whether a proposed contract or Consultant is selected for audit or review through A&I's risk-based approach is dictated by the dollar thresholds of the proposed contract, and other risk factors listed below.

Dollar thresholds for audits or reviews are stratified as follows:

- Less than \$150K – no audit or review is required, but is optional;
- Between \$150K and \$1M (Case 1);
- Between \$1M and \$3.5M (Case 2);
- \$3.5M and above (Case 3).

Specifics of Cases 1, 2 and 3 are outlined below.

Risk factors considered include the Consultant's, but not limited to:

- History of satisfactory performance;
- Prior FAR compliant history and audit frequency;
- Financial stability;
- Conformance to terms and conditions of previous contracts;
- General responsiveness and responsibility;
- The approximate dollar amount of all A&E contracts awarded to the consultant by Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultant's ICR;
- Responses to internal control questionnaire (ICQ), see [AASHTO Uniform Audit & Accounting Guide, Appendix B](#);
- Changes in the organizational structure.

If audited or reviewed, contracts, cost proposals, and ICR(s) shall be modified to conform to audit and review recommendations that address requirements. MTC is responsible for ensuring contracts, cost proposals, and ICR(s) are modified to conform to audit and review recommendations as necessary, and to ensure that audit findings and review deficiencies are resolved in a timely manner.

SUBCONSULTANT IMPACTS

Subconsultants are required to follow all the state, federal and contract requirements outlined above in *Standards that Apply*. In addition, all subconsultants are required to:

- Certify their contract costs and financial management system (Exhibit 10-K “*Consultant Certification of Contract Costs and Financial Management System*”) when the **total** contract between the prime consultant and the local agency is \$150K or more. (23 U.S.C. 112(b)(2)(B)). Reminder: The contract is between the local agency and the prime consultant. Subconsultants, as parties to the contract, must also adhere to this requirement.
- Use the accrual basis of accounting when developing their ICRs.
- Have an adequate job costing system.

Subconsultants’ cost proposals also must be submitted along with the prime Consultants’ cost proposals through the request for audit process (see *LAPM Exhibit 10-A “A&E Consultant Audit Request Letter and Checklist”*) when the total (prime plus subs) proposed contract is \$1M or more.

COGNIZANT LETTERS OF APPROVAL

“Cognizant” audits and reviews have been developed to assign primary responsibility for an ICR audit to a single entity (the “cognizant agency”) to avoid duplication of audit work performed in accordance with GAS. The objective of these audits and reviews is to obtain reasonable assurance that claimed costs are in accordance with the FAR cost principles. A cognizant agency may be the home state Department of Transportation (DOT) (the state where the consultant’s financial records are located), a federal agency, or a non-home state DOT to whom the home state has transferred cognizance. When providing cognizant ICR approval the cognizant agency may either perform an ICR audit themselves, or they may review and rely on the work/workpapers related to an ICR audit performed by a CPA. The desired outcome of a cognizant audit or CPA Workpaper Review is for the “cognizant agency” to issue a Cognizant Letter of Approval so that the ICR can be relied upon on future contracts with the consultant for a given year and for reliance by other state agencies using the same consultant.

A&I will accept a Consultant’s cognizant approved ICR for the applicable one-year accounting period, if rates are not under dispute. The Consultant is responsible for providing documentation of its cognizant approved ICR and Cognizant Letter of Approval.

MOST COMMON AUDITS AND REVIEWS TO BE PERFORMED

ICR AUDITS

During an ICR audit, the auditors (A&I or independent CPAs) will examine the Consultant’s proposed ICR for the applicable one-year accounting period on the proposed contract to ensure that unallowable costs have been removed from the overhead, that allowable costs have been correctly measured and properly allocated, and that the ICR has been developed in accordance with the FAR cost principles (as specified in 23 USC 112(b)(2)(B), 23 CFR 172.7(a), and 48

CFR Part 31). As a result of the audit, the local agency will work with the Consultant to adjust the ICR where disallowed costs are identified based on audit recommendations.

ICR Audits apply to Case 1 and Case 2 contracts (see Case descriptions below) selected for audit. Cognizant Letters of Approval are issued with ICR Audits.

For guidance regarding the existing policies and procedures set forth in the Federal Regulations, and acceptable samples of ICR schedules, refer to the AASHTO Uniform Audit & Accounting Guide, Chapter 5.

The review program in the AASHTO Uniform Audit & Accounting Guide, Appendix A, should be used as a guide in performing ICR audits. This review program will be used for reviews of CPA audited ICR workpapers.

IMPORTANT NOTE FOR CPAs: Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing is required. Strict use of the AASHTO Uniform Audit & Accounting Guide cannot be stressed enough.

CPA AUDITED ICR WORKPAPER REVIEWS

During a CPA Audited ICR Workpaper Review, A&I will review the CPA's workpapers of its ICR audit to determine whether it is appropriate to issue a Cognizant Letter of Approval. The Workpaper Review is conducted to determine whether: (a) the CPA's audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), (b) the CPA adequately considered the auditee's compliance with FAR Part 31 and related laws and regulations, and (c) the audit report format is acceptable. Chapter 11 of the AASHTO Uniform Audit & Accounting Guide includes a recommended format for the audit report and required disclosures.

CPA Audited ICR Workpaper Reviews apply to Case 3 contracts (see Case descriptions below) selected for review. Cognizant Letters of Approval are issued with CPA Workpaper Reviews.

The review program in the AASHTO Uniform Audit & Accounting Guide, Appendix A, will be used as a guide in performing CPA Workpaper Reviews.

IMPORTANT NOTE FOR CPAs: Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing required. Strict use of the AASHTO Uniform Audit & Accounting Guide cannot be stressed enough.

OTHER AUDITS AND REVIEWS THAT MAY BE PERFORMED

CONTRACT AUDITS AND REVIEWS

During a Contract Audit or Review, auditors will review contracts and the Consultants' financial management system to determine if:

- The Consultants' accounting system is adequate to accumulate and segregate costs;

- Proposed costs are reasonable;
- The contract contains all necessary fiscal provisions and the provisions are sufficient in content;
- Proper state and federal procurement requirements were followed;
- Direct labor costs are compliant;
- Other audits/reviews of the contract is necessary.

RISKASSESSMENTS

During a Risk Assessment, auditors may require an ICQ and certification of the ICRs and may perform a certain level of analytical reviews of the ICRs. They may review the contract provisions, ICQ, ICR, and/or cost proposal(s) to determine if:

- The required fiscal provisions are in the proposed contract;
- The ICR and/or cost proposal(s) are mathematically accurate and in the proper format;
- The ICR and/or cost proposal(s) contain questionable costs.

INCURRED COST AUDITS

During an Incurred Cost Audit, auditors will review contracts to determine if costs claimed are:

- Adequately supported;
- Reasonable in nature;
- Allowable, allocable, and reasonable;
- In compliance with state and federal laws and regulations;
- In compliance with the fiscal provisions stipulated in the contract.

FINANCIAL MANAGEMENT SYSTEM REVIEW

During a Financial Management System Review auditors will determine whether:

- The accrual basis of accounting was used to prepare the ICR;
- There is a job cost accounting system adequate to accumulate and segregate allocable and allowable project costs;
- The consultant complied with 49 CFR, Part 18.20, Standards for Financial Management Systems.

CASE 1: PROPOSED A&E CONSULTANT CONTRACTS OF \$150,000 OR MORE

CONSULTANTS:

Prime Consultants with a proposed contract **totaling** \$150,000 or more, **and** any subconsultants listed on the contract, must certify the accuracy of their contract costs and adequacy of their financial management systems (see Exhibit 10-K “*Consultant Certification of Contract Costs and Financial Management System*” attached as Appendix G-1). The certification is to be submitted to MTC who in turn will forward a copy to A&I.

Components include certification that:

- All costs included in the proposed contract to establish final ICR are allowable in accordance with the cost principle of the FAR, 48 CFR, Part 31.
- The proposed contract does not include any costs which are expressly unallowable under the cost principles of the FAR, 48 CFR, Part 31.
- All known material transactions or events that have occurred affecting the firm's ownership, organization, and ICRs have been disclosed.
- The consultant's financial management system meets the standards for financial reporting, accounting records, internal and budget controls set forth in the FAR 49 CFR, Part 18.20.
- The Consultant has provided the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to the consultant within the last three calendar years, and for all state DOTs and local agency contracts, and the number of states in which the firm does business.
- All direct costs included in the proposed contract are reasonable, allowable, and allocable in accordance with FAR 48 CFR, Part 31, in compliance with applicable accounting principles, and in compliance with the terms of the proposed contract.

Consultants must also ensure their ICRs are prepared in the acceptable ICR scheduled format, see AASHTO Uniform Audit & Accounting Guide, Chapter 5 tables.

MTC LOCAL AGENCIES:

MTC will forward copies of the Consultant and subconsultant, if any, certification (Exhibit 10-K "*Consultant Certification of Contract Costs and Financial Management System*" attached as Appendix G-1) to A&I. **See bottom of this Appendix for A&I's email or mailing address.**

Case 1 Consultants and contracts may be selected for an audit or review through a risk based approach described earlier in this section. Potential audits or reviews can be, but are not limited to:

- Contract Audits;
- Incurred Cost Audits;
- Financial Management System Review;
- ICR Audits;
- Risk Assessments.

CASE 2: PROPOSED A&E CONSULTANT CONTRACTS OF \$1M OR MORE

MTC and Consultants with a proposed contract **totaling** between \$1M and \$3.5M must comply with all the requirements outlined in Case 1 above.

In addition, MTC must send copies of the proposed contract and additional supporting documentation to A&I for review in conformance with certain requirements outlined in the LAPM. Once the proposed contract and additional supporting documentation are reviewed,

A&I will issue a Conformance Letter noting any deficiencies, if any. A&I will issue the Conformance Letter within 30 business days of receipt of a **complete** packet.

A **complete** packet consists of the documents listed below. MTC is required to provide these documents to A&I (see *LAPM* Exhibit 10-A “*A&E Consultant Audit Request Letter and Checklist*”):

1. Proposed contract between the local agency and consultant;
2. Cost proposal(s) for prime consultant **and** all subconsultants;
3. Names, mailing addresses, phone numbers and email addresses for prime consultant **and** subconsultants;
4. Name of local agency contact person, phone number, mailing addresses and email addresses;
5. Prime consultant generated ICR schedule prepared in accordance with applicable CFRs;
6. A completed ICQ (see AASHTO Uniform Audit & Accounting Guide, Appendix B), including all applicable attachments, for the prime consultant;
7. Exhibit 10-K “*Consultant Certification of Contract Costs and Financial Management System*” attached as *Appendix G-1* for the prime Consultant **and** all subconsultants.

And one of the following, **if available**:

- A copy of the prior fiscal year, and most recently completed fiscal year cognizant approved ICR and approved state DOT Cognizant Letter of Approval;
- A copy of the prior fiscal year, and most recently completed fiscal year, ICR Schedules and audited report by an independent CPA. If a CPA audited ICR is available for the appropriate fiscal year (applicable one-year accounting period), then the consultant must use the audited ICR, or a lower ICR (*see 23 CFR 172.7(b) for guidelines*);
- A copy of the prior, and most recently completed fiscal year, ICR(s) evaluation or audit report on a prior Caltrans or local agency contract, and any other governmental agency report/review/attestation.

Through A&I’s risk-based approach, Consultants may be selected for an ICR or other contract audits or reviews. If an ICR audit is performed and the Consultant’s ICR is in compliance with the FAR principles, a Cognizant Letter of Approval will be issued. *See bottom of this Appendix section for A&I’s Email or mailing address.*

CASE 3: PROPOSED A&E CONSULTANT CONTRACTS OF \$3.5M OR MORE

MTC and Consultants with a proposed contract **totaling** \$3.5M or more must comply with all the requirements in Case 1 and 2 above. Also, Consultants must provide the following to MTC who in turn will forward a copy to A&I:

- A state DOT’s approved ICR schedule **and** the Cognizant Letter of Approval;
- OR**
- CPA Audited ICR Audit Report **and** a copy of the CPA audited financial statements, if any.

Through A&I's risk-based approach, CPA Audited ICR Workpaper Reviews may be performed. Local agencies are responsible for ensuring both the Consultant and its CPA provide full access to the CPA's workpapers, including making copies upon request. Failure to do so may be considered a breach of contract. If a review is performed and the CPA's work is in compliance with the FAR principles, a Cognizant Letter of Approval will be issued. *See bottom of this Appendix section for A&I's Email or mailing address.*

REQUIREMENTS FOR A CONFORMANCE LETTER

A complete packet is required to begin a conformance review. See Case 2: Proposed A&E Consultant Contracts of \$1M or More above for elements of a complete packet.

Requirements for a Conformance Letter include:

- *LAPM* Exhibit 10-A "A&E Consultant Audit Request Letter and Checklist" and all applicable items listed.
- Cost proposal(s) presented in the applicable format for the method of payment for the prime consultant **and** all subconsultants in the proposed contracts (see Determine Method of Payment in Section 10.2 "Identifying & Defining a Need for Consultants" and Exhibit 10-H "Sample Cost Proposal" for required formats and example proposals).
- ICRs prepared using the accrual basis of accounting for both the prime and subconsultants.
- An adequate financial accounting system (job cost system) for both the prime and subconsultants.
- The required fiscal provisions specified below must be included verbatim in the proposed contract (see *LAPM* Exhibit 10-R "A&E Sample Contract Language" for sample language and requirements):
 1. Performance Period (begin and end date) (Article IV);
 2. Allowable Costs and Payments (Article V);
 3. Termination (Article VI);
 4. Cost Principles and Administrative Requirements; (Article VII);
 5. Retention of Records/Audit; (Article VIII);
 6. Audit Review Procedures, (Article IX);
 7. Subcontracting (Article X);
 8. Equipment Purchase (Article XI);
 9. State Prevailing Wage Rates (Article XII);
 10. Conflict of Interest (Article XIII);
 11. Rebates, Kickbacks or other Unlawful Consideration (Article XIV);
 12. Prohibition of Expending Local Agency State or Federal Funds for Lobbying (Article XV).

A Conformance Letter will be issued within 30 business days of receipt of a complete packet.

Contracts cannot be executed until the Conformance Letter is issued and noted deficiencies that address requirements, are corrected. Corrected deficiencies, however, do NOT need to be cleared through A&I before executing the contract. Any supporting documentation addressing

Conformance Letter deficiencies along with the executed contract shall be retained in the project file.

A&I email address: caltransfederalfundaward@dot.ca.gov

A&I mailing address: Department of Transportation Audits and Investigations,
 MS 2 Attention: External Audit Manager
 P.O. Box 942874
 Sacramento, CA 94274-0001

SUMMARY OF CONTRACTS TO BE AUDITED OR REVIEWED

<i>Proposed Contract Amount</i>	<i>Documents Required</i>	<i>Conformance Letter Required?</i>	<i>Audit/Review Performed?</i>	<i>If Audited or Reviewed will Cognizant Letter of Approval be Issued?</i>
Small Purchase Procedure Less than \$150K	None	No	Audit/Review not required	N/A
Case 1. Between \$150K and \$1M	Certification by Prime and Subconsultants (Exhibit 10-K attached as Appendix G-1)	No	May be selected for Audit or Review.	If ICR Audit is performed.
Case 2. Between \$1M and \$3.5M	<ul style="list-style-type: none"> • Certification for Prime and Subconsultants (Exhibit 10-Ks attached as Appendix G-1) • Cost proposals for Prime and Subconsultants • All other applicable documents listed on Exhibit 10-A of the LAPM 	Yes	May be selected for ICR or Contract Audit, or other Review.	Yes
Case 3. \$3.5M or greater	<ul style="list-style-type: none"> • Certification for Prime and Subconsultants (Exhibit 10-Ks attached as Appendix G-1) • Cost proposals for Prime and Subconsultants • All other applicable documents listed on Exhibit 10-A of the LAPM <p style="text-align: center;">AND CPA Audited ICR or cognizant approval.</p>	Yes	May be selected for Review of CPA's workpapers of audited ICR or Contract Audit, or other Review	Yes

APPENDIX G-1, CONSULTANT CERTIFICATION OF CONTRACT COSTS AND FINANCIAL MANAGEMENT SYSTEM

EXHIBIT 10-K CONSULTANT CERTIFICATION OF CONTRACT COSTS AND FINANCIAL MANAGEMENT SYSTEM

(Note: If requesting to utilize the Safe Harbor Indirect Cost Rate submit Attachment 1 of DLA-OB 13-07 - Safe Harbor Indirect Cost Rate for Consultant Contracts found at http://www.dot.ca.gov/hq/LocalPrograms/DLA_OB/DLA_OB.htm in lieu of this form.)

Certification of Final Indirect Costs:

Consultant Firm Name: _____

Indirect Cost Rate: _____ for fiscal period _____

*Fiscal period covered for Indirect Cost Rate developed (not the contract period).

Local Government: _____

Contract Number: _____ Project Number: _____

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

1. All costs included in this proposal to establish final Indirect Cost Rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31.
2. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR, Part 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization, and Indirect Cost Rates have been disclosed as of the date of proposal preparation noted above.

Certification of Financial Management System:

I, the undersigned, certify to the best of my knowledge and belief that our Financial Management System meets the standards for financial reporting, accounting records, internal and budget control as set forth in the FAR of Title 49, CFR, Part 18.20 to the extent applicable to Consultant.

Certification of Dollar Amount for all A&E Contracts:

I, the undersigned, certify that the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to this firm within the last three (3) calendar years for all State DOT and Local Agencies is \$_____ and the number of states in which the firm does business is_____.

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are reasonable, allowable and allocable to the contract in accordance with

the cost principles of the FAR of Title 48, CFR, Part 31. Allowable direct costs to a Government contract shall be:

1. Compliant with Generally Accepted Accounting Principles (GAAP) and standards promulgated by the Cost Accounting Standards Board (when applicable).
2. Compliant with the terms of the contract and is incurred specifically for the contract.
3. Not prohibited by 23 CFR, Chapter 1, Part 172 – Administration of Engineering and Design Related Service Contracts to the extent requirements are applicable to Consultant.

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files.

Subconsultants (if applicable)

Proposed Contract Amount (or amount not to exceed if on-call contract): \$ _____

Prime Consultants (if applicable)

Proposed **Total** Contract Amount (or amount not to exceed if on-call contract): \$ _____

Prime, list all subconsultants and proposed subcontract dollar amounts (attach additional page if necessary):

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Consultant Certifying (Print Name and Title):

Name: _____

Title: _____

Consultant Certification Signature **: _____

Date of Certification (mm/dd/yyyy): _____

Consultant Contact Information:

Email: _____

Phone number: _____

****An individual executive or financial officer of the consultant’s organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the Indirect Cost Rate proposal submitted in conjunction with the contract.**

Note: Per 23 U.S.C. 112(b)(2)(B), Subconsultants must comply with the FAR Cost Principles contained in 48 CFR, Part 31. 23 CFR Part 172.3 Definitions state: Consultant means the individual or firm providing engineering and design related services as a party to the contract. Therefore, subconsultants as parties of a contract must complete a certification and send originals to A&I and keep copies in Local Agency Project Files.

Distribution: 1) Original to Caltrans Audits and Investigations
2) Retained in Local Agency Project Files