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TRANSPORTATION
COMMISSION**

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March 08, 2016

**REQUEST FOR QUALIFICATIONS (RFQ)
LEGAL SERVICES FOR PROCUREMENT OF
NEXT-GENERATION CLIPPER® SYSTEM**

NOTICE IS HEREBY GIVEN that the Metropolitan Transportation Commission (MTC), invites your firm to submit a Statement of Qualifications (SOQ) to provide legal services on an as-needed basis in support of MTC's procurement of a next-generation Clipper® electronic fare payment system.

The RFQ documents for this project are available for download on the MTC website at <http://procurements.mtc.ca.gov/>. Firms 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.

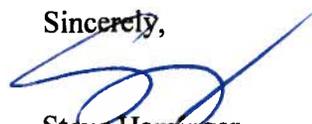
Interested law firms must submit an original and three (3) hard copies, as well as one electronic PDF version, of their SOQ by **4:00 p.m. on Monday, April 4, 2016**, in accordance with the instructions contained in the RFQ. Other key RFQ Dates are listed in Section V, Selection Timetable of the RFQ.

Any contract entered into as a result of this RFQ will be funded, in whole or in part, with federal funds from the U.S. Department of Transportation. Accordingly, the requirements included in Attachment D, 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: Brooke D. Abola, Senior Counsel
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter,
101 Eighth Street
Oakland, CA 94607-4700
E-mail: babola@mtc.ca.gov

Thank you for your interest.

Sincerely,



Steve Heminger
Executive Director

SH:BA

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TABLE OF CONTENTS

I. MTC AND PROJECT DESCRIPTION1
A. DESCRIPTION OF MTC1
B. PROJECT DESCRIPTION1
II. MINIMUM QUALIFICATIONS.....2
III. SCOPE OF WORK, PERIOD OF PERFORMANCE, AND BUDGET2
A. SCOPE OF WORK2
B. PERIOD OF PERFORMANCE3
C. BUDGET3
IV. REQUESTS FOR CLARIFICATION OR EXCEPTIONS.....3
V. LEGAL COUNSEL SELECTION TIMETABLE3
VI. SUBMITTAL OF SOQ.....3
VII. FORM OF SOQ.....5
VIII. SOQ EVALUATION6
A. VERIFICATION OF MINIMUM QUALIFICATIONS.....6
B. REVIEW FOR GENERAL RESPONSIVENESS.....6
C. EVALUATION PANEL AND EVALUATION CRITERIA7
D. FIRM INTERVIEWS7
E. RECOMMENDATION FOR CONTRACT AWARD7
IX. GENERAL CONDITIONS1
A. AWARD1
B. CONTRACT ARRANGEMENTS1
C. SELECTION DISPUTES1
D. PUBLIC RECORDS2
E. NOT USED3
F. CONFLICTS OF INTEREST3
G. NOT USED4
H. NOT USED4
I. WEB-BASED COMMUNICATION.....4
J. PAYMENT, SUB-CONTRACTOR AND PREVAILING WAGE INFORMATION4
K. NOT USED4
L. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENT4
APPENDIX A, NOT USED5
APPENDIX B, NOT USED.....6
APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT.....7
APPENDIX D, MTC STANDARD CONSULTANT CONTRACT8
ATTACHMENT A, SCOPE OF WORK17
ATTACHMENT B, KEY PERSONNEL ASSIGNMENTS.....18
ATTACHMENT C, INSURANCE PROVISIONS19
ATTACHMENT D, FEDERALLY REQUIRED CLAUSES23
14. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.28
ATTACHMENT E, STATE REQUIRED CLAUSES.....38
APPENDIX D-1, INSURANCE REQUIREMENTS51
APPENDIX E, NOT USED.....54
APPENDIX F, FEDERAL REQUIREMENTS55
APPENDIX F, FEDERAL REQUIREMENTS55
**APPENDIX F-1, CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS.....58**
APPENDIX F-2, CERTIFICATION OF RESTRICTIONS ON LOBBYING.....61
APPENDIX F-3, LOCAL AGENCY CONSULTANT DBE COMMITMENT62
APPENDIX F-4, LOCAL AGENCY CONSULTANT DBE INFORMATION64
APPENDIX F-5, DBE INFORMATION – GOOD FAITH EFFORTS66

I. MTC AND PROJECT DESCRIPTION

A. *Description of MTC*

MTC was created by the state Legislature in 1970 (California Government Code § 66500 *et seq.*) to serve as the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area.

B. *Project Description*

The Office of General Counsel (OGC) advises and provides legal services to MTC. From time to time, OGC requires outside legal assistance in specialized areas of law, which is the purpose of this RFQ. In particular, OGC requires outside legal assistance in connection with the procurement and negotiation of one or more contracts to deliver a next-generation Clipper® electronic transit fare payment system.

Clipper® is the regional transit fare payment system for the nine-county San Francisco Bay Area. Transit riders can use a reloadable Clipper® card to pay fares on most transit systems in the San Francisco Bay Area, including but not limited to the Alameda-Contra Cost Transit District; the San Francisco Bay Area Rapid Transit District; the City and County of San Francisco, acting by and through its Municipal Transportation Agency; the San Mateo County Transit District; the Santa Clara Valley Transportation Authority; the Peninsula Corridor Joint Powers Board; the Golden Gate Bridge Highway and Transportation District; and the Water Emergency Transportation Agency (San Francisco Bay Ferry). These eight largest transit systems provide about 1.5 million transit rides on a typical weekday. The Clipper® fare payment system charges customers by deducting value from a Clipper® card in accordance with fare policies established by each transit operator. The system provides the associated revenue to each transit operator through an automated financial settlement process. As of January 2016, there were more than 1,700,000 active Clipper® card accounts, and the Clipper® system processed more than 755,000 transactions on a typical weekday (a transaction occurs when a customer pays a fare using a Clipper® card or adds value to a Clipper® card).

The Clipper® system includes more than 5,000 Clipper® fare payment devices (as well as other equipment types) currently in operation on the transit operators' fleets and platforms. The system includes a telephone customer service center; three in-person customer service centers; three web sites (clippercard.com; clipperdirectbenefits.com; and m.clippercard.com); a financial clearinghouse that distributes transit fare revenue to the participating transit systems; an equipment maintenance program; a pre-tax transit benefit program; and other services.

MTC is the Clipper® program manager, responsible for managing and administering the Clipper® program on behalf of and in coordination with the participating transit operators. MTC works in close partnership with the transit operators that accept Clipper® for fare payment, and MTC holds a Design-Build-Operate-Maintain (DBOM) contract with the current Clipper® contractor, Cubic Transportation Systems, Inc. This contract expires in November 2019.

MTC will also serve as the contracting agency for the next-generation Clipper® system, and MTC and the transit operators are currently planning for the next-generation system. While the

current Clipper® system functions reliably and generally meets contractual performance requirements, the system design has technical shortcomings that affect both transit agencies and Clipper® cardholders.

Planning efforts completed to date have involved establishing a vision, goals and objectives for the next-generation system; researching industry best practices and lessons learned; evaluating the current cost of fare collection in the region; and coordinating fare policies aimed at simplifying regional fare coordination for riders and transit operators. MTC and participating transit operators are now working on finalizing a System Description/Concept of Operations document as well as developing and implementing a procurement strategy and preliminary transition plan for the system. MTC currently plans to initiate the procurement(s) for the next generation Clipper® system in 2017.

II. MINIMUM QUALIFICATIONS

SOQs must demonstrate that the law firm submitting the SOQ meets the following Minimum Qualifications to be eligible for consideration for this project:

1. Attorneys must be licensed to practice before the state and federal courts in one of the states of the United States and be in good standing with the applicable state bar association. At least one team attorney must be licensed to practice in the State of California and be a member of the California State Bar in good standing.
2. At least one attorney on the team must have at least five (5) years' experience in each area of specialty listed in Section III.A, below. NOTE: This requirement may be satisfied by one or more attorneys.
3. The partner in charge must have at least ten (10) years' experience.
4. The firm or the partner in charge must have represented at least one (1) government sector client on an electronic payment system matter during the last six (6) years.

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

A. Scope of Work

The contract awarded by MTC will include a general scope of work based on the following areas of specialty:

- Procurement of large (>\$20 million) public contracts with local, state and federal funding, including novel or non-traditional procurement strategies.
- Procurement and implementation of contracts for the development and implementation of complex software systems.
- Procurement and implementation of contracts for customer service.
- Intellectual property, specifically as it relates to issues of contracts for electronic payment software systems.
- Privacy and data security, specifically as they relate to issues of contracts for electronic payment software systems and/or customer service.
- Electronic payments law.
- Other legal specialty areas related to procurement and implementation of the next-generation Clipper® system contract(s), as needed.

Work will be requested on an as-needed basis.

B. Period of Performance

MTC expects the work to commence on or about May 15, 2016, and to be completed no later than June 30, 2018. At MTC's sole option, the contract may be extended for up to five (5) additional years in increments of MTC's choosing for work related to the procurement and implementation of the next-generation Clipper® system.

C. Budget

MTC has budgeted approximately \$450,000 for this effort through June 30, 2018. The contract resulting from this solicitation, if awarded, will combine payment on an hourly fee for service basis, plus expenses, and fixed fees for defined services. Additional funding may be available in future Fiscal Years subject to approval of future MTC budgets.

IV. REQUESTS FOR CLARIFICATION OR EXCEPTIONS

Any addenda will be posted on MTC's website. All firms 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 Friday, March 18, 2016, to guarantee a response or consideration. MTC reserves the right to reject any SOQ that contains unauthorized conditions or exceptions.

V. LEGAL COUNSEL SELECTION TIMETABLE

4:00 p.m., on Friday, March 18, 2016	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, April 4, 2016*	Closing date/time for receipt of SOQs
Week of April 18, 2016*	Interviews, if necessary
May 11, 2016*	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

1. Interested firms must submit an original and three (3) hard copies, as well as one electronic PDF version, of their SOQ by **4:00 p.m. on Monday, April 4, 2016. Submission of an electronic copy of the SOQ without hard copies will not satisfy the submission requirement. No SOQs submitted solely by email and no faxed SOQs will be considered.**

2. SOQs are to be addressed as follows:

MTC Legal Services for Next Generation Clipper® System
Attention: Brooke D. Abola
101 Eighth Street – Third Floor Receptionist
Oakland, CA 94607

3. Firm's name and return address must also appear on the envelope.
4. SOQs will be received only at the address shown above and **no later than the date and time indicated**. MTC is not responsible for deliveries delayed for any reason. Any SOQ received after said date and time or at a place other than the stated address cannot be considered and will be returned to the firm unopened.
5. All SOQs, whether delivered by an employee of the firm, 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 3rd floor at the receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of SOQs
6. Firm agrees and acknowledges all RFQ specifications, terms and conditions and indicates ability to perform by submission of a SOQ.

If selected, a signed SOQ submitted to MTC in response to this RFQ shall constitute a binding offer from [firm name] to contract with MTC according to the terms of the SOQ for the duration of the performance period from May 15, 2016 to June 30, 2018.

7. An 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.
8. This RFQ does not commit MTC to award a contract or to pay any costs incurred by any firm in the preparation of a SOQ in response to this RFQ.
9. Only one SOQ will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.
10. MTC reserves the right to accept or reject all SOQs submitted, waive minor irregularities, request additional information, and negotiate with any or all firms.
11. MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFQ.
12. 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 and enter into a contract with the next highest scoring firm.

13. Online Vendor Registration is required to be eligible for contract award. Firms should visit <http://procurements.mtc.ca.gov/Vendors/vendor-information.html> to register in the MTC Vendor Database.
14. 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 firm. Page limits, where specified, are for single-sided print. Firms 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 firm's capabilities.

SOQs must include 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.

1. A transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm. The transmittal letter should refer to this RFQ by title and date and should include the name and telephone number of a contact person and a statement that the SOQ is a firm offer to enter into a contract with MTC according to the terms of this RFQ.
2. A firm profile and summary of the firm's qualifications in relation to the requested areas of expertise. The summary should include a brief history of the firm's experience in representing government entities, particularly transportation agencies.
3. Descriptions of any assignments relevant to meeting the Minimum Qualifications, listed in Section V, above. The description should include the following:
 - Client agency
 - General description of work performed, including length of assignment
 - Names of the staff proposed for this project who worked on the project and their roles
 - A summary of the outcome and achievements of the assignment
4. Resumes of proposed personnel that should include: a description of relevant experience relevant to meeting the Minimum Qualifications listed in Section V above, proposed role, length of work experience, and areas of expertise.
5. References who can attest to key staff's experience in performing work substantially similar to the services covered by this RFQ. References should include contact

- information, including agency and contact name, email and telephone number, and the name of the project or projects completed by the firm for that client.
6. A description of any potential conflicts of interest with other clients and how prospective conflicts will be handled.
 7. A signed California Levine Act statement (*Appendix C*).
 8. Fee proposal (Please respond to both Alternative A and Alternative B below):
 - a. Alternative A: Hourly rates. Please provide hourly rates for all proposed project personnel assuming hourly billing. Include a description of all costs and expenses that would be passed along to MTC. Also include a statement that the rates indicated shall be firm through December 31, 2016, and a description of the basis on which hourly rates will escalate, with a “not to exceed” cap.
 - b. Alternative B: Fixed fee. Please provide a proposed fixed fee for the work on the next-generation Clipper® system procurement through finalization of the contract(s), together with a description of the key assumptions used in developing the proposed fixed fee.
 9. Submit a signed acknowledgement that the firm 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 wishes to contract with the firm. (See Section IX.B of the RFQ for how to request exceptions to the minimum insurance requirements.)
 10. 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>.
 11. 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.)
 12. 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. Firms failing to meet the Minimum Qualifications will not be considered.

B. Review for General Responsiveness

The MTC Project Manager, 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. Firms 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 firms prior to evaluation.

C. Evaluation Panel and Evaluation Criteria

Responsive SOQs will then be evaluated by an evaluation panel of MTC and partner agency 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. Firms shall neither contact nor lobby any evaluation panel members during the evaluation process. Any attempt by firm to contact and/or influence members of the evaluation panel may result in disqualification of firm.

Responsive SOQs shall be evaluated on the basis of the following evaluation factors, in descending order of relative importance:

1. Qualifications and experience of attorneys who will be providing services in the areas of law to which the SOQ is directed, including depth and breadth of relevant experience of partner-in-charge, depth and breadth of firm and attorney experience representing public agencies in electronic payment systems matters, and scope of services offered.
2. Cost effectiveness (including hourly rates, fixed fee proposal and assumptions, and local presence of key personnel).

D. Firm Interviews

Following the initial evaluation of SOQs, the evaluation panel may elect to recommend a firm with or without interviews or may develop a short list of firms to be considered for selection. Oral interviews will be held with short-listed firms. If a short list is developed, firms that were not selected for the short list will be notified; however, 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 SOQs submitted, to waive minor irregularities in SOQs, and to request additional information from one or more of the firms. Any award made will be made to the firms whose SOQs are the most advantageous to MTC, based on the evaluation criteria listed above.

E. Recommendation for Contract Award

The evaluation panel will recommend the selected firm to the MTC Executive Director, to be forwarded to the MTC Administration Committee for approval.

IX. GENERAL CONDITIONS

A. Award

Any award made will be to the firm 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 firm 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 firm will be deemed to accept MTC's standard contract provisions, unless such language is protested in accordance with Section C below.

The selected firms will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1, Insurance Requirements*. The firm 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 wishes to contract with the firm. 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 firm 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 contract resulting from this solicitation, if awarded, will combine payment on an hourly fee for service basis, plus expenses, and/or fixed fees for defined services.

C. Selection Disputes

A firm 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 firm 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 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 the ultimate firm 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 firm wish to appeal the decision of the MTC Executive Director, it may file a written appeal with the MTC Administration Committee, 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 firm 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 SOQs submitted to MTC will be made available for inspection consistent with its policy regarding Public Records Act requests.

If the firm believes any SOQ content contains trade secrets or other proprietary information that the firm believes would cause substantial injury to the firm's competitive position if disclosed, the firm 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 SOQ:

“The data on the following pages of this SOQ, 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 firm's competitive position. The firm 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 firm submitting this SOQ, 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. **Any language purporting to render the entire SOQ confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the firm may not designate any required SOQ forms or the cost proposal as confidential. Consequently, any language purporting to render any SOQ 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 firm will be advised of the request. If the SOQ requests that MTC withhold such data from disclosure and MTC complies with the firm’s request, the firm shall assume all responsibility for any challenges resulting from the non-disclosure; indemnify and defend MTC and hold it 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 firm information); and pay any and all costs and expenses relating to the withholding of the firm information.

If the firm does not mark each page containing proprietary information as confidential, does not include the statement described above at the front of its SOQ, and does not request that MTC withhold information marked as confidential and requested under the California Public Records Act, MTC shall have no obligation to withhold the information from disclosure, and the firm 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. Not Used

F. Conflicts Of Interest

By submitting an SOQ, the firm 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 firm 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 an agreement 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 firm. If the conflict cannot be mitigated acceptably, MTC may disqualify the firm. After award, the firm 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 an agreement as a result of information gained in performance of this or some other project.

The firm shall not engage the services of any subcontractor or independent contractor on any work under 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

Firm 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

Firm 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. Not Used

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. The selected Firm'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, NOT USED

APPENDIX B, NOT USED

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	Federal D. Glover	Julie Pierce
Tom Azumbrado	Scott Haggerty	Libby Schaaf
Jason Baker	Anne W. Halsted	Bijan Sartipi
Tom Bates	Steve Kinsey	James P. Spering
David Campos	Sam Liccardo	Adrienne J. Tissier
Dave Cortese	Mark Luce	Scott Wiener
Dorene M. Giacomini	Jake Mackenzie	Amy Rein 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 _____

For LEGAL SERVICES

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2016, by and between the Metropolitan Transportation Commission (“MTC”), a regional transportation planning agency established pursuant to California Government Code § 66500 and _____ (“LEGAL COUNSEL”).

RECITALS

WHEREAS, MTC intends to contract for the services of one or more law firms to provide legal services to MTC in connection with the procurement and implementation of the next-generation Clipper® electronic transit fare payment system on an as-needed basis (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 D, Federally-Required Clauses, attached hereto and incorporated herein, apply to the Project; and

WHEREAS, the parties hereto now wish to enter into an agreement (the “Agreement”) pursuant to which LEGAL COUNSEL will render professional services in connection with the Project as hereinafter provided;

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

LEGAL COUNSEL's services are generally described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. LEGAL COUNSEL agrees to provide legal services on an as-needed basis as directed by Adrienne Weil, MTC’s General Counsel (“Project Manager”) or a designated representative, which shall include MTC’s Deputy General Counsel (currently Cynthia E. Segal, and Senior Counsel (currently, Brooke D. Abola and Matthew A. Lavrinets). As Project Manager, Adrienne D. Weil is responsible for the administration of this Agreement.

1.1 SUBMISSION OF CONTRACT DOCUMENTS

To the extent requested by the Project Manager, LEGAL COUNSEL shall submit communications and required documentation, including but not limited to invoices, requests for contract modifications, to the PROJECT MANAGER or his or her designee via a one or more web-based systems designated by MTC to which MTC will provide LEGAL COUNSEL 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

LEGAL COUNSEL's services hereunder shall commence on or after July 1, 2014, and shall be completed no later than June 30, 2018, unless earlier terminated or extended as hereinafter provided in to Article 5, Amendments. Funding after June 30, 2015, is subject to MTC's annual agency budget approval process.

3. COMPENSATION AND METHOD OF PAYMENT

A. Compensation. LEGAL COUNSEL shall be compensated for services based on the hourly rates for the key personnel set forth in Attachment B, Key Personnel and Billing Rates, attached hereto and incorporated herein by this reference, which include all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, materials and supplies; provided, however, that the Project Manager and LEGAL COUNSEL may agree in writing to lump sum deliverable amounts for work requested by MTC. Such authorization shall be signed by the Project Manager and LEGAL COUNSEL and shall contain a description of the work requested in sufficient detail to define the deliverable for which payment shall be made.

B. Expenses. MTC will reimburse LEGAL COUNSEL for all expenses deemed reasonable and necessary by MTC incurred by LEGAL COUNSEL in the performance of this Agreement. Reimbursable expenses shall include actual courier messenger services, docket/search fees, outbound faxes, express mail or special handling mail; mileage; outside document production; photocopying charges; publication charges; postage; long distance telephone charges; actual on-line legal research charges, not to exceed \$100 without prior approval; court and other litigation costs; and pre-authorized transportation and other expenses incurred by employees or agents of LEGAL COUNSEL on MTC's behalf.

C. Maximum Payment. Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation and reimbursement for expenses to be paid LEGAL COUNSEL under this Agreement exceed: _____.

D. Method of Payment. LEGAL COUNSEL shall submit invoices for services rendered on a monthly basis, identifying the work for which payment is requested; the hours worked or the deliverable completed; any authorized expenses, together with receipts for such expenses, if requested; the total amount requested; and the cumulative amount billed and paid under this Agreement. Payment shall be made by MTC within thirty (30) days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative. All invoices shall be submitted electronically via email to MTC at acctpay@mtc.ca.gov or made in writing and delivered or mailed to MTC as follows:

Attention: Adrienne D. Weil
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 - 8th Street
Oakland, CA 94607-4700

4. KEY PERSONNEL

The key personnel to be assigned to this work by LEGAL COUNSEL and their hourly rates, if applicable, are set forth in Attachment B, Key Personnel and Billing Rates, attached hereto and incorporated herein by this reference. LEGAL COUNSEL agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken.

5. AMENDMENTS

MTC reserves the right to request changes in the services to be performed by LEGAL COUNSEL. All such changes shall be incorporated in written amendments, which shall 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 LEGAL COUNSEL and specifically identified as amendments to the Agreement. The Project Manager is not a designated representative, for purposes of approving an amendment.

Any services added to the scope of the Agreement by an amendment shall be subject to all applicable conditions of the Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed amendment.

6. TERMINATION

MTC may terminate this Agreement, in whole or in part, at any time by written notice to LEGAL COUNSEL. Upon receipt of notice of termination, LEGAL COUNSEL 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. LEGAL COUNSEL shall be reimbursed for hours performed, plus expenses, up to the time of termination, not to exceed the maximum

amount payable under the Agreement or, for deliverables-based payment, not to exceed the maximum payable for the deliverable.

LEGAL COUNSEL may withdraw from representation of MTC, and terminate this Agreement, at any time, as required or permitted by Rule 3-700 of the California Rules of Professional Conduct, on “Termination of Employment,” operative May 27, 1989 (and as those Rules may be amended from time to time).

7. INSURANCE REQUIREMENTS

LEGAL COUNSEL shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement types of insurance and financial security listed in Attachment C, 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. STATUS OF LEGAL COUNSEL

LEGAL COUNSEL is an independent contractor retained through this Agreement to provide legal services in specific areas of law and not to participate in or advise MTC on general ongoing decisions. LEGAL COUNSEL is not an employee of MTC and has no authority to contract or enter into any other agreement in the name of MTC. LEGAL COUNSEL has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by LEGAL COUNSEL who are assisting in the performance of services under this Agreement. LEGAL COUNSEL 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. LEGAL COUNSEL shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

LEGAL COUNSEL shall conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendations or counsel independent of the control and direction of MTC or any MTC official, other than normal contract monitoring, and shall possess no authority with respect to any MTC decision beyond rendition of information, advice, recommendations or counsel. The authority of LEGAL COUNSEL to make representations or statements on behalf of MTC shall be limited to representations or statements that reflect or convey agency decisions of MTC, and which are of a type that outside counsel normally make in the context of representation of a client.

The Executive Director of MTC has determined that LEGAL COUNSEL has been hired to perform a range of duties that are limited in scope and thus is not required to comply with disclosure requirements of the MTC Conflict of Interest Code (MTC Resolution No. 1198, and of the Political Reform Act, Government Code § 81000 *et seq.*, and related regulations).

9. WORK PRODUCTS CONFIDENTIAL

Work products prepared or assembled by LEGAL COUNSEL, obtained from others by LEGAL COUNSEL or made available to LEGAL COUNSEL by MTC in connection with the services under this Agreement shall be treated as confidential by LEGAL COUNSEL and subject to the Attorney Work Product Doctrine and the attorney-client privilege, and LEGAL COUNSEL agrees that they shall not be made available to any individual or organization without prior approval of MTC.

10. SUBCONTRACTS

LEGAL COUNSEL shall not subcontract all or any portion of its services under this Agreement without the prior written approval of the Project Manager or a designated representative, and any attempt to do so shall be void and unenforceable. In the event that LEGAL COUNSEL enters into one or more subcontracts pursuant to this Article, it is understood and agreed that the participating subcontractors shall be solely and directly responsible to LEGAL COUNSEL, and MTC shall have no obligation to them.

11. ASSIGNMENT OF AGREEMENT

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

12. RECORDS

LEGAL COUNSEL shall maintain full and adequate books, records, and accounts in accordance with generally accepted accounting practices. All such books, records, accounts, and any and all work products, materials, and other data relevant to its performance under this Agreement shall be retained by LEGAL COUNSEL for a minimum of four (4) years following the fiscal year of the last expenditure under this Agreement.

Any conflicting language regarding retention of records contained in Attachment D, Federally-Required Clauses, shall supersede this Article.

13. AUDITS

LEGAL COUNSEL shall permit MTC and its authorized representatives to have access to LEGAL COUNSEL'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 12. LEGAL COUNSEL shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

Any conflicting language regarding audits contained in Attachment D, Federally-Required Clauses, shall supersede this Article.

14. NOTICES

Except for invoices submitted by LEGAL COUNSEL 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: Adrienne Weil General Counsel Metropolitan Transportation Commission 101 - 8th Street Oakland, CA 94607-4700 Email: aweil@mtc.ca.gov Fax: 510.817-5830
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To LEGAL COUNSEL:	Attention: _____ _____
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15. PROHIBITED INTEREST

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, LEGAL COUNSEL further covenants that it has made a complete disclosure to MTC of all facts of which it is aware upon due inquiry bearing upon any possible interest, direct or indirect, which 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.

16. SOLICITATION OF CONTRACT

LEGAL COUNSEL warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for LEGAL COUNSEL, 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 LEGAL COUNSEL, 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 LEGAL COUNSEL's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

17. INTEREST OF THE LEGAL COUNSEL

LEGAL COUNSEL covenants that it has a duty to disclose any potential conflicts of interest and has disclosed any potential conflicts of interest existing at the time of execution of the Agreement. LEGAL COUNSEL will otherwise act in accordance with its ethical obligations in performing its work for MTC.

18. LAWS AND REGULATIONS

LEGAL COUNSEL shall comply with any and all laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of 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 which are imposed on MTC as a recipient of federal or state funds are hereby in turn imposed on LEGAL COUNSEL. Attachment D, Federally Required Clauses, and its parts, and Attachment E, State Required Clauses, and its parts, are attached hereto and incorporated herein by this reference.

19. REMEDIES FOR BREACH

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 LEGAL COUNSEL 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.

20. CHOICE OF LAW

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

21. MEDIATION

Prior to the initiation of any legal proceedings, the parties of this Agreement agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to non-binding mediation. Such mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The Party seeking to initiate mediation shall do so by submitting a formal, written request to the other party to this Agreement. This section shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation 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.

22. ENTIRE AGREEMENT

The Agreement is the entire agreement of the parties. LEGAL COUNSEL represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature.

23. PARTIAL INVALIDITY

If any term or condition of the 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.

24. BENEFIT OF AGREEMENT

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

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

METROPOLITAN
TRANSPORTATION COMMISSION

[TBD-LEGAL COUNSEL]

Steve Heminger, Executive Director

TBD

ATTACHMENT A

Scope Of Work Outline of Services

The services to be performed by LEGAL COUNSEL shall consist of legal services requested by the Project Manager or a designated representative in the following areas of specialty:

- Procurement of large public contracts with local, state and federal funding, including novel or non-traditional procurement strategies.
- Procurement and implementation of contracts for the development and implementation of complex software systems.
- Procurement and implementation of contracts for customer service.
- Intellectual property, specifically as it relates to issues of contracts for electronic payment software systems.
- Privacy and data security, specifically as they relate to issues of contracts for electronic payment software systems and/or customer service.
- Electronic payments law.
- Other legal specialty areas related to procurement and implementation of the next-generation Clipper® system contract(s), as needed.

ATTACHMENT B

Key Personnel Assignments

	<u>Name</u>	<u>Rate/hour</u>	<u>Description</u>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

ATTACHMENT C
Insurance Provisions

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover LEGAL COUNSEL'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 LEGAL COUNSEL authorizes to work under this Agreement (hereinafter referred to as "Agents.") LEGAL COUNSEL 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.

LEGAL COUNSEL 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, LEGAL COUNSEL 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 LEGAL COUNSEL's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event LEGAL COUNSEL 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 LEGAL COUNSEL's insurance be primary without right of contribution from MTC. Prior to beginning work under this contract, LEGAL COUNSEL 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 LEGAL COUNSEL'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 LEGAL COUNSEL 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

LEGAL COUNSEL and LEGAL COUNSEL'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, 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.

MTC and those entities listed in Part 3 of this Attachment C (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 LEGAL COUNSEL's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by LEGAL COUNSEL and LEGAL COUNSEL'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 \$4,000,000 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 \$5,000,000 per claim.

6. Property Insurance. Property Insurance covering LEGAL COUNSEL'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.

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

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. LEGAL COUNSEL'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. LEGAL COUNSEL shall be responsible for payment of any deductible or retention on LEGAL COUNSEL'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 LEGAL COUNSEL insurance policy that contains a deductible or self-insured retention, LEGAL COUNSEL 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 LEGAL COUNSEL, subconsultant, subcontractor, or any of their employees, officers or directors, even if LEGAL COUNSEL 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, LEGAL COUNSEL 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, LEGAL COUNSEL 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 LEGAL COUNSEL's personnel, subconsultants, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally accepted. LEGAL COUNSEL 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, LEGAL COUNSEL 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.

H. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by LEGAL COUNSEL are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by LEGAL COUNSEL pursuant hereto.

2. ADDITIONAL INSUREDS

The following entities are to be named as Additional Insureds under applicable sections of this Attachment C.

NONE

ATTACHMENT D
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 LEGAL COUNSEL 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. LEGAL COUNSEL or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. LEGAL COUNSEL 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 LEGAL COUNSEL 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. The DBE goal for this Agreement is zero percent (0%). LEGAL COUNSEL 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, LEGAL COUNSEL 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. LEGAL COUNSEL or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. LEGAL COUNSEL shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by LEGAL COUNSEL 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 LEGAL COUNSEL as retainage, LEGAL COUNSEL, 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. LEGAL COUNSEL 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 LEGAL COUNSELS 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 D-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 D-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 LEGAL COUNSEL or LEGAL COUNSEL'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 LEGAL COUNSEL 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 LEGAL COUNSEL in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify LEGAL COUNSEL 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

LEGAL COUNSEL 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

LEGAL COUNSEL 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

LEGAL COUNSEL 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

LEGAL COUNSEL 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

LEGAL COUNSEL shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to LEGAL COUNSEL 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 LEGAL COUNSEL 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/Federal Highway 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

LEGAL COUNSEL 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. LEGAL COUNSEL 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 LEGAL COUNSEL'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

LEGAL COUNSEL 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.

LEGAL COUNSEL 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 LEGAL COUNSEL'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. LEGAL COUNSEL 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, LEGAL COUNSEL agrees to reimburse MTC for those costs within sixty (60) days of written notification by MTC.

LEGAL COUNSEL 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.

LEGAL COUNSEL 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. LEGAL COUNSEL 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. LEGAL COUNSEL agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

13. ENERGY CONSERVATION.

LEGAL COUNSEL 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. LEGAL COUNSEL 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, LEGAL COUNSEL 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, LEGAL COUNSEL 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 LEGAL COUNSEL to the extent the Federal Government deems appropriate.
- B. LEGAL COUNSEL 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 LEGAL COUNSEL, to the extent the Federal Government deems appropriate.

- C. LEGAL COUNSEL 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 LEGAL COUNSEL 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, LEGAL COUNSEL or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from this Agreement.

16. DEBARMENT

LEGAL COUNSEL 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

LEGAL COUNSEL 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

LEGAL COUNSEL 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.

LEGAL COUNSEL MUST FILL OUT & SIGN THIS PAGE (at contract execution)
ATTACHMENT D-1

EXHIBIT 10-O1 LEGAL COUNSEL PROPOSAL DBE COMMITMENT

1. Local Agency: MTC 2. Contract DBE Goal: 0%
 3. Project Description: Legal services for next generation Clipper® system
 4. Project Location: San Francisco Bay Area
 5. Consultant's Name: _____ 6. Prime Certified DBE:

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Local Agency to Complete this Section			11. TOTAL CLAIMED DBE PARTICIPATION %
17. Local Agency Contract Number:			
18. Federal-Aid Project Number:			
19. Proposed Contract Execution Date:			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 _____
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: <u>Denise Rodrigues</u> 23. Phone <u>510-817-5897</u> 24. Local Agency Representative's Title <u>Contract Compliance Manager</u>			

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 – LEGAL COUNSEL PROPOSAL DBE COMMITMENT

LEGAL COUNSEL 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.
-

LEGAL COUNSEL MUST FILL OUT & SIGN THIS PAGE (at contract execution)
ATTACHMENT D-2

EXHIBIT 10-O2 LEGAL COUNSEL CONTRACT DBE COMMITMENT

1. Local Agency: MTC 2. Contract DBE Goal: 0%
 3. Project Description: Legal services for next generation Clipper® system
 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	
Local Agency to Complete this Section			\$ %	
20. Local Agency Contract Number: _____				14. TOTAL CLAIMED DBE PARTICIPATION
21. Federal-Aid Project Number: _____				
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 _____ 26. Phone _____ 27. Local Agency Representative's Title _____			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 – LEGAL COUNSEL CONTRACT DBE COMMITMENT
LEGAL COUNSEL 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.

USE IF FEDERALLY FUNDED. Consultant must submit form with their invoice on a monthly basis

ATTACHMENT D-3

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

Project Name			Agency		Contract Term:	NTE Amount:	Federal Aid #:
Legal services for next-generation Clipper® System			MTC				
Prime Contractor	Contract Name	Address	City, State, Zip Code		Email	Phone	Fax
		101 8 th St	Oakland, CA 94607				

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:	\$8.00	\$8.00			

highlight + F9 = math

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

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 E

State Required Clauses

ATTACHMENT E-1

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, LEGAL COUNSEL 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. LEGAL COUNSEL 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. LEGAL COUNSEL 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. LEGAL COUNSEL, 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 LEGAL COUNSEL'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. LEGAL COUNSEL shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

4. LEGAL COUNSEL 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 LEGAL COUNSEL was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that LEGAL COUNSEL 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 LEGAL COUNSEL and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to LEGAL COUNSEL, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure LEGAL COUNSEL's breach of this Agreement.

ATTACHMENT E-2

NONDISCRIMINATION ASSURANCES

LEGAL COUNSEL 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 LEGAL COUNSEL receives federal financial assistance from the Federal Department of Transportation. LEGAL COUNSEL HEREBY GIVES ASSURANCE THAT LEGAL COUNSEL 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, LEGAL COUNSEL hereby gives the following specific assurances with respect to its federal-aid Program:

1. That LEGAL COUNSEL 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 LEGAL COUNSEL 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: LEGAL COUNSEL 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 LEGAL COUNSEL 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 LEGAL COUNSEL 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 LEGAL COUNSEL 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 LEGAL COUNSEL 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 LEGAL COUNSEL 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 LEGAL COUNSEL 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 LEGAL COUNSEL 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 LEGAL COUNSEL retains ownership or possession of the property.

9. That LEGAL COUNSEL 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 LEGAL COUNSEL, 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 LEGAL COUNSEL 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. LEGAL COUNSEL 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. LEGAL COUNSEL 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 LEGAL COUNSEL by STATE, acting for the U.S. Department of Transportation, and is binding on LEGAL COUNSEL, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

APPENDIX A TO ATTACHMENT E-2

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

(1) Compliance with Regulations: LEGAL COUNSEL 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: LEGAL COUNSEL, 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. LEGAL COUNSEL 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 LEGAL COUNSEL 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 LEGAL COUNSEL of the LEGAL COUNSEL's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: LEGAL COUNSEL shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to LEGAL COUNSEL'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 LEGAL COUNSEL is in the exclusive possession of another who fails or refuses to furnish this information, LEGAL COUNSEL shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts LEGAL COUNSEL has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of LEGAL COUNSEL'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 LEGAL COUNSEL 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: LEGAL COUNSEL 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.

LEGAL COUNSEL 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 LEGAL COUNSEL becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, LEGAL COUNSEL may request STATE enter into such litigation to protect the interests of STATE, and, in addition, LEGAL COUNSEL may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B TO ATTACHMENT E-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 LEGAL COUNSEL 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 LEGAL COUNSEL 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 LEGAL COUNSEL 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 LEGAL COUNSEL, its successors and assigns.

LEGAL COUNSEL, 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 LEGAL COUNSEL 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 E-2

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

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by LEGAL COUNSEL, pursuant to the provisions of Assurance 7 (b) of Attachment E-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, LEGAL COUNSEL 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, LEGAL COUNSEL 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 LEGAL COUNSEL, 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 E-3, STATE DEPARTMENT OF TRANSPORTATION
REQUIREMENTS**

Caltrans Non – Discrimination

A. In the performance of work undertaken pursuant to this Agreement, LEGAL COUNSEL 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. LEGAL COUNSEL 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. LEGAL COUNSEL 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 LEGAL COUNSEL'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. LEGAL COUNSEL shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under this Agreement.

D. LEGAL COUNSEL 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 LEGAL COUNSEL.

E. LEGAL COUNSEL 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.

APPENDIX D-1, INSURANCE REQUIREMENTS

Minimum Insurance Coverages. LEGAL COUNSEL 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 (√)	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.
—	<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 LEGAL COUNSEL'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 LEGAL COUNSEL is a sole proprietor or a corporation with stock 100% owned by officers with no employees.
—	<u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of LEGAL COUNSEL and LEGAL COUNSEL'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, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Expense for Indemnitee's defense costs shall be outside of policy limits and such policy shall be issued on a Duty to Defend Primary Occurrence Form. MTC, and its commissioners, officers, representatives, agents and employees are to be named as additional insureds. Such insurance as afforded by this endorsement shall be primary as respects any claims, losses or liability arising directly or indirectly from LEGAL COUNSEL's operations.
—	<u>Business Automobile Insurance</u> for all automobiles owned, used or maintained by LEGAL COUNSEL and LEGAL COUNSEL's officers, agents and employees, including but not limited to owned, leased, non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence.
—	<u>Umbrella Insurance</u> in the amount of \$4,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance.
—	<u>Errors and Omissions Professional Liability Insurance</u> in an amount no less than \$5,000,000.
—	<u>Property Insurance.</u> Property Insurance covering LEGAL COUNSEL'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.

LEGAL COUNSEL'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.

LEGAL COUNSEL shall be responsible for payment of any deductible or retention on LEGAL COUNSEL'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 LEGAL COUNSEL insurance policy that contains a deductible or self-insured retention, LEGAL COUNSEL 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 LEGAL COUNSEL, subconsultant, subcontractor, or any of their employees, officers or directors, even if LEGAL COUNSEL or subconsultant is not a named defendant in the lawsuit.

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

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, LEGAL COUNSEL 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 LEGAL COUNSEL's personnel, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally accepted. LEGAL COUNSEL 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, LEGAL COUNSEL 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 LEGAL COUNSEL are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by LEGAL COUNSEL 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 D 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. LEGAL COUNSEL's DBE participation on its Agreement with MTC will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

MTC will establish Disadvantaged Business Enterprise (DBE) goals for the contract entered into as a result of this RFQ.

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 Firm shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Firms 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 Firm to be considered responsible and responsive, the Firm must make good faith efforts to meet the goal established for the contract. If the goal is not met, the Firm 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 Firm must execute and return the forms.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the Firm’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 Firm not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - 1. The Firm is a DBE and will meet the goal by performing work with its own forces.
 - 2. The Firm will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
 - 3. The Firm, 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 Firm 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)

**APPENDIX F-3, LOCAL AGENCY CONSULTANT DBE COMMITMENT
EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT**

1. Local Agency: MTC 2. Contract DBE Goal: 0%
 3. Project Description: Legal Services for Next Generation Clipper® System
 4. Project Location: San Francisco Bay Area
 5. Consultant's Name: _____ 6. Prime Certified DBE:

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION	%
17. Local Agency Contract Number:			
18. Federal-Aid Project Number:			
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 <u>Denise Rodrigues</u> 23. Phone <u>510-817-5897</u> 24. Local Agency Representative's Title <u>Contract Compliance Manager</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

- 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.
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APPENDIX F-4, LOCAL AGENCY CONSULTANT DBE INFORMATION

EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: MTC 2. Contract DBE Goal: 0%
 3. Project Description: Legal Services for Next Generation Clipper® System
 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
Local Agency to Complete this Section			
20. Local Agency Contract Number:	14. TOTAL CLAIMED DBE PARTICIPATION		\$
21. Federal-Aid Project Number:			
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>Denise Rodrigues</u> 26. Phone <u>510-817-5897</u> 27. Local Agency Representative's Title <u>Contract Compliance Manager</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

- 28. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 29. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 30. Project Location** - Enter the project location as it appears on the project advertisement.
- 31. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
- 32. Consultant's Name** - Enter the consultant's firm name.
- 33. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 34. Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
- 35. 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.
- 36. 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.
- 37. 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.
- 38. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 39. 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.
- 40. 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.
- 41. 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).
- 42. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 43. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 44. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 45. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 46. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 47. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 48. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 49. Contract Execution Date** - Enter the date the contract was executed.
- 50. 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.
- 51. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 52. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 53. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 54. 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 April 4, 2016

The Metropolitan Transportation Commission established a Disadvantaged Business Enterprise (DBE) goal of 0% 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.