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March 16, 2016

REQUEST FOR QUALIFICATIONS (RFQ)

Electronic Payments Section Consultant Assistance 2016 - 2019

NOTICE IS HEREBY GIVEN that the Metropolitan Transportation Commission (MTC), invites your firm to submit a Statement of Qualification (SOQ) for the Electronic Payments Consultant Assistance Project. Through this Request for Qualifications (RFQ), MTC will select one or more qualified consultants ("Consultant Bench") with which MTC may contract to provide services related to this project on an as-needed basis.

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

Interested firms must submit an original and five (5) copies, as well as one electronic PDF version (on USB drive) of their SOQ by **4:00 p.m. on April 14, 2016**, in accordance with the instructions contained in the RFQ. Other key RFQ Dates are listed in Section V, Consultant Selection Timetable of the RFQ.

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

MTC Point of Contact: Stephen Abbanat, Project Manager
The Metropolitan Transportation Commission

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E-mail: clipperprocurements@mtc.ca.gov

Thank you for your interest.

Sincerely,
Signed by:

Andrew B. Fremier
Deputy Executive Director, Operations

AF:SA:mg

Dave Cortese, Chair
Sonoma County

Jake Mackenzie, Vice Chair
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Cities of San Mateo County

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James P. Spring
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San Mateo County

Scott Wiener
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I. AGENCY AND PROGRAM DESCRIPTIONS

A. *Description of MTC, BATA and BAIFA*

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.

The Bay Area Toll Authority (BATA) was created by the California Legislature in 1997 to administer the base \$1 auto toll on the San Francisco Bay Area's seven state-owned toll bridges. In August 2005, the California Legislature expanded BATA's responsibilities to include administration of all toll revenue and joint oversight of the toll bridge construction program with Caltrans and the California Transportation Commission.

The Bay Area Infrastructure Financing Authority (BAIFA) was created in 2006 as a Joint Powers Authority (JPA) between MTC and BATA to plan, develop, operate and finance transportation projects. In September 2011, the Joint Exercise of Powers Agreement creating BAIFA was amended to permit BAIFA to participate in developing and operating express lanes. In October 2011, the California Transportation Commission found 270 miles of express lanes eligible for development and operation by MTC under Section 149.7 of the Streets and Highways Code. In April 2013, MTC delegated its express lane responsibilities to BAIFA.

B. *Description of Programs to be Supported*

The mission of the Electronic Payment Section (EPS) is to increase the efficiency of regional transportation by providing Bay Area travelers with convenient, standardized, customer-service oriented, and cost-effective products and services to pay for bridge tolls, transit fares, Express Lane (EL) fees, and related transportation services, such as parking. The purpose of this RFQ is to select a bench of consultants to provide consulting assistance services for programs administered by EPS as well as other agency programs as needed. The programs for which consulting assistance may be requested include, but are not limited to the Clipper[®] regional transit fare payment system, the FasTrak[®] electronic toll collection system (administered by BATA) and the regional EL program (administered by BAIFA).

Clipper[®]

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 many public transit systems in the Bay Area, including: Alameda County Transit, Bay Area Rapid Transit, Caltrain, Golden Gate Transit and Ferry, San Francisco Municipal Transportation Agency, SamTrans, Water Emergency Transportation Agency, and Valley Transportation Authority. The program continues to expand, with additional regional operators either participating in the program or in the process of planning to add operational services. The twenty two participating 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 December 2015, there were more than 1,700,000 active Clipper[®] cards accounts, and the Clipper[®] system processed more than 800,000 transactions on a typical weekday. A transaction occurs when a customer pays their fare using a

Clipper[®] card or when the customer adds value to a Clipper[®] card. Generally speaking, Clipper[®] handles about 36% of the all fare payment transactions for the eight largest participating systems. The Clipper[®] system currently includes more than 9,000 Clipper[®] fare payment devices, ticket vending machines, and other equipment types in operation at transit operators' points of service delivery, such as on a bus or at a station. The system also includes a telephone-based customer service center, three in-person customer service centers, a website (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 expects to expand Clipper[®] to additional transit systems in the coming years.

MTC is the Clipper[®] Program Contract Manager responsible for managing and administering the program on behalf of the participating transit operators. MTC works in close partnership with the transit operators that accept Clipper[®] for fare payment through a regional Clipper[®] Executive Board that establishes policy and priorities for the program. As the Clipper[®] Contract Manager, MTC holds the contract with the design-build-operate-maintain (DBOM) contractor, Cubic Transportation Systems, Inc. (Clipper[®] Contractor).

FasTrak[®]

FasTrak[®] is an electronic toll collection (ETC) system that allows drivers to prepay their bridge tolls, eliminating the need to stop at the toll plaza. FasTrak[®] also allows solo drivers to pay to use Bay Area EL. The toll collection system includes several components which work together to support prepayment of tolls: a toll tag, which is placed inside the vehicle; an overhead antenna, which reads the toll tag and collects the toll; video cameras that are used to identify toll evaders, a customer service center and web site, and a back office system used to manage customer account information and process payments. In fiscal year 2014-15, the seven state-owned toll bridges in the Bay Area, generated approximately \$695 million in total toll revenues.

Currently, all lanes on all Bay Area toll bridges are equipped with the FasTrak[®] equipment. All of the bridges have at least one lane dedicated to FasTrak[®] use with dedicated lanes handling almost three times as many vehicles per hour as a lane in which tolls are collected manually. An Open Road Tolling lane, such as those on the Benicia-Martinez Bridge, can process about four to five times more vehicles per hour than a cash lane. On Express Lanes, solo drivers with FasTrak[®] toll tags installed on the windshield can access the Express Lanes and pay the posted toll automatically without slowing down. The toll will vary depending on the level of congestion in the lanes. The variable toll provides access to paying motorists and guarantees a reasonable travel time for all users. Carpools can continue to use the lanes for free.

FasTrak[®] ETC usage on the bridges has experienced a generally upward trend with each passing month. As of June, 2015, 63 percent of the total traffic passing through the toll plazas use the ETC system, with this share jumping above 78 percent during the weekday peak. BATA manages and invests revenues from all tolls levied on the seven state-owned toll bridges: Antioch, Benicia-Martinez, Carquinez, Dumbarton, Richmond-San Rafael, San Francisco-Oakland Bay and San Mateo-Hayward.

BATA is the FasTrak[®] Program Contract Manager responsible for managing and administering the program on behalf of the participating regional stakeholders. As the FasTrak[®] Contract Manager, BATA holds the contract with the design-build-operate-maintain (DBOM) contractor, Xerox Corporation (FasTrak[®] Contractor).

Express Lanes

EL are specially-designated highway lanes that offer toll-free travel for carpools, vanpools, motorcycles, buses and eligible clean-air vehicles. Solo drivers also have the choice to pay to use the lanes for reliable travel times.

Bay Area transportation agencies are developing a 550-mile network of Bay Area EL that will be completed in 2035. Currently, lanes are open on I-680 southbound from Pleasanton to Milpitas and on SR-237 between Milpitas and San Jose. Lanes on I-580 between Dublin and Livermore will open early 2016, weather dependent. BAIFA's efforts will convert 150 miles of existing High Occupancy Vehicle (HOV) lanes to express lanes and add 120 miles of new lanes to close network gaps. Ultimately, BAIFA will operate 270 miles of Bay Area EL.

Bay Area EL are being developed and implemented by several partner agencies including the Alameda County Transportation Commission (ACTC), MTC, the Santa Clara Valley Transportation Authority (VTA), BAIFA, the California Highway Patrol (CHP), Caltrans, the Contra Costa Transportation Authority (CCTA) and the Solano Transportation Authority (STA).

C. Areas of Consultant Expertise

MTC (references to "MTC" shall hereafter be deemed to include BATA and BAIFA unless context otherwise dictates) seeks consultant assistance in overseeing implementation and operation of regional electronic payment systems. There are multiple focus areas in which MTC seeks assistance, which represent areas of specific expertise as well as generalized support for periods of peak activity. Within these focus areas, a significant portion of the assignments involve the Clipper[®] Contractor, which works under contract to MTC to implement and operate the Clipper[®] fare payment system and the FasTrak[®] Contractor. Assignments for support of the Next Generation Clipper[®] (C2), next generation Fastrak[®], and EL implementation are also anticipated. Assignments may require coordination with several stakeholders, including MTC, external entities including transit, bridge, or EL operators, social service advocates, private entities, and the riding public.

Respondents may submit SOQs for any portion of any or all Service Categories described below, either as an individual firm or as the lead firm in a multi-disciplinary consultant team. If a consultant team is formed, one firm within each team must submit the SOQ and serve as the prime consultant. Remaining firm(s) shall be subcontractor(s). To be eligible for SOQ evaluation, the respondent team must meet each of the Minimum Qualifications (MQs) described in Section II of this RFQ for the relevant Service Categories or portion(s) thereof.

Consultants with which MTC contracts (reference includes consultant teams) shall provide on-call assistance for electronic payment system implementation and operations services included in the following Service Categories on an as-needed basis. The Service Categories are briefly described below, and a Preliminary Scope of Work is attached in *Appendix A*.

SERVICE CATEGORIES

A. Program Management

The selected Consultants shall assist MTC in the management and administration of electronic payment program implementation and operations. Program management involves overseeing discrete work functions and products, as well as larger and interrelated activities. Information regarding typical tasks under this Service Category is included in *Appendix A*.

B. Planning

The selected Consultants shall assist MTC in strategic and operational planning tasks, both with regard to the long range future of the electronic payment programs as well as options for refinement, management, and expansion of the current systems. Additional information regarding this Service Category is included in *Appendix A*.

C. Operational Monitoring and Reporting

The selected Consultants shall assist MTC in its review and evaluation of the ongoing operations of electronic payment programs. The goals of the operational monitoring include benchmarking, verification that past problems have been rectified, identification of current problems, and verification of ongoing performance levels. Consultant may be asked to work with various groups to ensure optimal and required performance, including MTC, the Clipper[®] Contractor, FasTrak[®] Contractor, partnering transit, bridge or EL operators, and various stakeholders. Information regarding typical tasks under this Service Category is included in *Appendix A*.

D. Technology Evaluation and Support

The selected Consultants shall assist MTC in evaluation, input into design, and implementation of vendor technology for the benefit of electronic payment programs, including customer service centers. Consultant shall also provide support for the evaluation of complementary and/or alternative technology solutions that may be used to enhance or potentially replace existing systems. Where applicable, MTC may utilize Consultant to provide specific technology services. With this Service Category, MTC seeks Consultants with an understanding of technology that can be applied to the existing tolling and electronic payment programs, as well as expansion using new technology as the systems mature. Additional information regarding typical tasks under this Service Category is included in *Appendix A*.

E. Communications and Customer Information Services

The selected Consultants shall assist staff in implementing public awareness, customer communication, customer education, outreach, and other information services for operational programs on an as-needed basis. Additional information regarding typical tasks under this Service Category is included in *Appendix A*.

F. Compliance and Risk Management

The selected Consultants shall assist staff in developing systems and procedures for risk management; claims avoidance; and ensuring programmatic compliance with federal, state and local governmental requirements and regulations and payment, technology, financial and banking industry standards. Information regarding typical tasks under this Service Category is included in *Appendix A*.

II. MINIMUM QUALIFICATIONS

SOQs must demonstrate that the firm or team submitting the SOQ (“Proposer”) meets the following Minimum Qualifications (MQ) to be eligible for consideration for this project. If the SOQ is submitted by a Proposer comprised of a firm leading a team, each applicable MQ may be met by one or more of the team’s participating firms.

Minimum Qualifications – All Service Categories

1. Proposers must designate at least one (1) Lead Staff member, who must have at least five (5) years of experience performing work substantially similar to each applicable Service Category [or portion thereof, as specified on page 20 hereto], as described in *Appendix A, Preliminary Scope of Work*.
2. Lead Staff must have successfully completed at least one (1) project performing work substantially similar to each applicable Service Category [or portion thereof, as specified on page 20 hereto], as described in *Appendix A, Preliminary Scope of Work*, with a contract value in excess of \$50,000 within the past five (5) years.
3. Proposers must clearly indicate the Service Categories for which they propose to offer services in their SOQ and complete all required templates provided as SOQ attachments pursuant to Section VII, *Form of SOQ*.

Other Qualifications

In addition to the MQs listed above, each Proposer will be evaluated on its:

- Experience with transit, fare collection, toll collection, smart card, and/or payment technology implementation projects;
- Experience working with transit and toll system technology operations, either nationally or internationally;
- Experience working with transit and toll systems customer service centers;
- Experience bringing leading practice principles and an understanding of transit and toll technology vendors and products to electronic fare and toll payment systems;
- Key staff experience supporting Bay Area electronic fare and toll payment systems and an understanding of BAIFA, BATA, and MTC roles within the region;
- Key staff familiarity with Bay Area electronic fare and toll payment systems, with experience working with local transit operators, an understanding of transit, bridge, and EL operating challenges and knowledge of Bay Area transit, bridge, and EL coordination issues, experience with transit, bridge and EL technology implementation and operation nationally and internationally, an understanding of transit, bridge and EL technology vendors and products; and
- Key staff with Project Management Institute Project Management Professional (PMP) certificates or similar equivalent professional certifications.

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

A. Scope of Work

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

B. Period of Performance

MTC expects the work awarded pursuant to this RFQ to commence on or about June 1, 2016 and be completed no later than June 30, 2019. At MTC's sole option, the bench performance period may be extended for up to two (2) additional years in increments of MTC's choosing for work contemplated by *Appendix A, Preliminary Scope of Work*.

C. Budget

MTC has budgeted approximately one million five hundred thousand dollars (\$1,500,000) for this effort through June 30, 2019. Additional funding may be available in future Fiscal Years (FYs) subject to approval of future MTC budgets.

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

A pre-submittal conference will be held at 1 p.m. on Thursday, March 24, 2016 at the Joseph P. Bort MetroCenter Building, 101 8th Street, Oakland, in Conference Room 171.

Any addenda will be posted on MTC's website. All Proposers are responsible for checking the website for any addenda to the RFQ.

Any requests for clarification of or exceptions to RFQ requirements must be received in writing by MTC, at email address ClipperProcurements@mtc.ca.gov no later than 4:00 p.m. on Monday, March 28, 2016 to guarantee a response or consideration. MTC reserves the right to reject any SOQ that contains unauthorized conditions or exceptions.

V. CONSULTANT SELECTION TIMETABLE

1:00 p.m. on Thursday, March 24, 2016	Pre-Submittal Conference, at 101 8 th Street, Oakland, CA 94607, Conference Room 171.
4:00 p.m. on Monday, March 28, 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., Thursday, April 14, 2016*	Closing date/time for receipt of SOQs
Week of April 25, 2016*	Interviews/ (if held)
Friday, May 13, 2016*	MTC Operations Committee Approval

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

VI. SUBMITTAL OF SOQ

- Interested firms must submit an original and five (5) copies, as well as one electronic PDF version of their SOQ together with required electronic form(s) on a flash/USB drive, by **4:00 p.m. on Thursday, April 14, 2016. Submission of an electronic copy of the SOQ without**

hard copies will not satisfy the submission requirement. No SOQs submitted by email and no faxed SOQs will be considered.

2. SOQs are to be addressed as follows:

Electronic Payment Section Consultant Assistance RFQ
Attention: Stephen Abbanat
Joseph P. Bort MetroCenter
3rd Floor Receptionist
101 Eighth Street
Oakland, CA 94607-5769

3. Proposer's name and return address must 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 Proposer unopened.
5. All SOQs, whether delivered by an employee of the Proposer, U.S. Postal Service, courier or package delivery service, must be received and time stamped at the stated address **prior to or no later than the time designated**. The timestamp located on the third floor at the Receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of all SOQs submitted.
6. Proposer 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 Proposer to contract with MTC according to the terms of the SOQ for the duration of the performance period.

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 Proposer 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 Proposers.
11. MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFQ.

12. Online Vendor Registration is required to be eligible for contract award. Proposers should visit <http://procurements.mtc.ca.gov/Vendors/vendor-information.html> to register in the MTC Vendor Database.
13. The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of Central Contractor Registration / Federal Agency Registration (CCR/FedReg), Online Representations and Certifications Application (ORCA), and Excluded Parties List System (EPLS). Firms submitting SOQs for contracts with federal funds must register on the SAM website at <https://www.sam.gov/portal/SAM/##11> prior to SOQ submission.

VII. FORM OF SOQ

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

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

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

Each SOQ must include the following:

A. Transmittal Letter

SOQs must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and containing the name and telephone number of a contact person, if different from the signatory. Indicate whether there are any conflicts of interest, actual or apparent, that would limit the Proposer's ability to provide the requested services and describe the plan for mitigating such conflicts. Acknowledge the receipt of this RFQ and any Addendum to the RFQ. Indicate that the SOQ is a firm offer to enter into a contract to perform work related to this RFQ for a period of three (3) years, with an optional additional two (2) years, from the due date for SOQs.

B. Title Page

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

C. Table of Contents

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

D. Overview and Summary

This section shall include brief statement summarizing the Proposer's understanding of MTC's service requirements. The Proposer may also include a brief statement about its general approach to service delivery or specific considerations it feel are important to highlight. The overview is limited to three (3) pages. Information may include, but is not limited to, summary statements about the following:

- General approach to client service delivery;
- Qualities that distinguish the Proposer from others;
- Factors that contribute to high quality work;
- Service Categories for which the Proposer intends to offer services;
- List of methodologies, intellectual property, or other assets that may benefit MTC; and
- Prior history of working with MTC, BATA, BAIFA, or similar agencies.

E. Service Delivery Plan

This section is a brief summary of the Proposer's proposed approach to staffing and coordinating work with MTC. The service delivery plan should assume a bench contract is awarded and describe the Proposer's approach to service delivery in the applicable Service Categories described in *Appendix A, Preliminary Scope of Work*. The service delivery plan should be limited to nine (9) pages, and describe the following:

1. Approach to coordinating work activities with MTC. Briefly describe team governance or assigned lead resources for specific roles, such as contract management, project management, or lead resources for specific Service Categories. Please limit this section to one (1) page.
2. Approach to identifying and assigning resources to specific work. Proposer should include any constraints that might impact the ability to quickly identify resources, develop work plans or deliver work to meet agreed schedules. Proposer should describe its approach to client communications as it applies to MTC programs. It is recommended that Proposer summarize roles and responsibilities of key personnel or any relevant reporting structures, if applicable. Proposer should demonstrate an understanding of MTC's work environment in the response. Finally, the Proposer may optionally include specific MTC roles that the Proposer believes are necessary to support the delivery of quality services. Please limit this section to three (3) pages.
3. Provide a statement asserting the Service Categories for which the Proposer is seeking qualification and summarize staff work experience. The work experience overview should identify key staff or projects by Service Category as defined in *Appendix A, Preliminary Scope of Work*. This statement should include a table mapping years of experience for key personnel to each Service Category, as applicable. Please limit this section to two (2) pages plus tables demonstrating that the Minimum Qualifications have been met by the designated Lead Staff or other team member(s). The recommended format is as follows:

Staff Skills Map to Service Category
(years of experience)

No.	Individual Name	Program Management	Planning	Operational Monitoring and Reporting	Technology Evaluation and Support	Communications and Customer Information	Compliance and Risk Management
1	<i>Lead Staff A - Ms. Smith</i>	5	5		8		1
2	<i>Lead Staff B - Mr. Brown</i>	5		5	3	10	
3	<i>Lead Staff C - Mr. Rodriguez</i>	5		10			20

4. Describe the proposed approach to maintain quality results. Include a description of the role of any subcontractors, their specific responsibilities, and how their work will be supervised to maintain quality. The Proposer should describe the approach to managing communications between MTC, prime contractor staff, and subcontractors, if applicable. Please limit this section to two (2) pages or less.
5. Discuss methods, formal and informal, that Proposer uses to track and resolve problems/obstacles during the delivery of a project. Please limit this section to one (1) page.

F. Qualifications and References

1. Describe proposed team's qualifications specific to the requirements set forth in Section II, Minimum Qualifications. Identify the personnel, including subcontractors' personnel, whose expertise or experience addresses each of the specified needs. Proposers are welcome to identify and provide project examples of any other qualifications they feel are critical to the successful completion of the Preliminary Scope of Work attached as *Appendix A*.
2. Identify key personnel (including key subcontractor personnel) and briefly discuss individual qualifications to perform work similar to the Service Categories described in *Appendix A, Preliminary Scope of Work*. Each resume or qualifications description for key personnel should not exceed two pages.
3. Provide a succinct description (one page maximum) of any previous projects similar to the Preliminary Scope of Work attached as *Appendix A*, indicating the project title, duration, budget, sponsoring agency and sponsor project manager, and roles played by individuals proposed for this project. Include the name of the agency for whom the work was performed, year performed, and name of the contact person. If the project contact is the source of a reference, please provide the contact's telephone number and email address. It is requirement to include in this section a summary table mapping projects described to the Service Categories. The recommended format is as follows:

Project Experience Map to Service Category

No.	Project Name	Program Management	Planning	Operational Monitoring and Reporting	Technology Evaluation and Support	Communications and Customer Information Services	Compliance and Risk Management
1	Example Project A	X	X		X		
2	Example Project B	X		X			X
3	Example Project C	X				X	

4. Provide a list of references (including references for subcontractors) and their contact information, including telephone numbers and email addresses.
5. Provide a summary of all contracts your firm (including subcontractors) has held with MTC, MTC Service Authority for Freeways and Expressways (MTC-SAFE), BATA, BAIFA or Bay Area Headquarters Authority (BAHA) in the past three years, including a brief description of the scope of work, the contract amount, and date of execution.

G. Cost Proposal

Based on the service delivery plan and staff described in response to Subsection, E, listed above, provide a breakdown of hourly rates by consultant or rate category (if applicable) in *Appendix B, Consultant Rate Form*. Hourly rates shall be fully loaded and include all direct and indirect costs¹. Fully loaded hourly rate means an hourly rate that includes all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, and ordinary materials and supplies. The rates indicated shall be firm for three (3) years.

1. The rates quoted should identify key personnel by name or job title with descriptions sufficient to provide a full explanation of the resources committed.
2. For hourly rates, include a breakdown of each fully loaded rate into the following categories: Direct labor; indirect labor/labor overhead; G&A/overhead; and proposed profit/fee percentage.
3. For hourly rates, specify the key resources and rate categories by name along with the applicable rate breakdown in a format substantially similar to the *Resource Rate Schedule* attached as *Appendix B* to this RFQ. *Appendix B* is available in electronic spreadsheet format. Proposers shall submit rates in an electronic spreadsheet format that matches this template with the electronic copy of their SOQ as well as the print copies, and to provide rates for Fiscal Year 2016-17 as well as any rate escalations for Fiscal Years 2017-18 and 2018-19 (July 1 through June 30).

¹ Respondents are responsible for submitting rates commensurate with Service Categories likely to include work requiring additional insurance, e.g., Employee Dishonesty/Crime Insurance, in addition to the minimum insurance requirements in *Appendix C-1*.

H. California Levine Act Statement

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

I. Insurance Provisions

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

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

J. Taxpayer Identification Number and Certification

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

K. Federal Requirements

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

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

L. Iran Contracting Act

Pursuant to California Public Contracts Code Sections 2200 *et seq.*, (AB 1650, Iran Contracting Act of 2010) Proposers for contracts equal to or in excess of one million dollars (\$1,000,000) must certify, at the time of SOQ submission that Proposer is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable. Submit a signed Iran Contracting Act Document (*Appendix E*).

M. Financial Responsibility

IN A SEPARATE SEALED ENVELOPE: Provide a copy of Proposer's most recent annual and past quarterly financial filing. The statements will not be considered part of the SOQ for purposes of the California Public Records Act and will be reviewed to determine responsibility only. All financial statements will be returned to the Proposer prior to Consultant selection.

VIII. SOQ EVALUATION

A. Verification of Minimum Qualifications

The MTC Project Manager will review SOQs to ensure that each SOQ meets the MQs set out in Section II, Minimum Qualifications of this RFQ. Proposers failing to meet the MQs 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. Proposers failing to meet the MQs listed in this RFQ or to satisfy the federal Disadvantaged Business Enterprise (DBE) requirements (if applicable), will not be considered responsive. Also, any SOQ that does not include enough information to permit the evaluators to rate the SOQ in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. A SOQ that fails to include one or more items requested in Section VII, Form of SOQ may be considered responsive, if evaluation in every criterion is possible. MTC reserves the right to request additional information from responsive Proposers prior to evaluation. References will be checked prior to evaluation.

C. Evaluation Panel and Evaluation Criteria

Responsive SOQs will then be evaluated by an evaluation panel of MTC 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 or Contracts Coordinator only. Proposers shall neither contact nor lobby any evaluation panel members during the evaluation process. Any attempt by Proposer to contact and/or influence members of the evaluation panel may result in disqualification of Proposer.

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

- | | |
|--|--------|
| 1. Experience and Qualifications of Firms and Proposed Staff | (30%) |
| 2. Cost Effectiveness | (30%) |
| 3. Depth of Staff Resources | (20%) |
| 4. Written and Oral Communication | (15%) |
| 5. References | (5%) |
| | (100%) |

D. Proposer Interviews

Following the initial evaluation of SOQs, the evaluation panel may elect to recommend a list of qualified firms for inclusion on the Consultant Bench with or without interviews or may develop a short list of firms to be considered for selection. In-person 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 Operations Committee authorizes award.

Following the evaluation, the panel may elect to recommend for inclusion on the Consultant Bench a list of consultants in one or more of the following Service Categories:

- A. Program Management
- B. Planning
- C. Operational Monitoring and Reporting
- D. Technology Evaluation and Support
- E. Communications and Customer Information Services
- F. Compliance and Risk Management

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. Further, MTC reserves the right to accept or reject any and all SOQ submitted, to waive minor irregularities in SOQs, and to request additional information from one or more Proposers. Any awards made will be made to the firms whose SOQs are the most advantageous to MTC, based on the evaluation criteria listed above.

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

E. Recommendation for Contract Award

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

F. Assigning Work

Contracts awarded by MTC may include a specific scope of work based on the areas identified in *Appendix A, Preliminary Scope of Work* or be task order based. MTC reserves the right in its sole discretion to determine which panel Proposer's qualifications, experience, available resources, ability to perform according to the required schedule, and hourly rates best suit each project. MTC reserves the right to issue a mini-Request for Qualifications or mini-Request for Proposal (mini-RFQ or mini-RFP) prior to contract or task order award. A mini-RFQ or mini-RFP is an RFQ/RFP that is sent to any or all Proposers selected for the applicable Service Category of the Consultant Bench resultant of this RFQ. The mini-RFQ or mini-RFP award will be made based on the evaluation factors listed in the mini-RFQ or mini-RFP. Selection to be on the Consultant Bench will not necessarily result in award of any contract or task order work.

IX. GENERAL CONDITIONS

A. Award

Selection to the Consultant Bench in each Service Category will be made to the Proposers whose SOQs are most advantageous to MTC based on the evaluation criteria defined in Section VIII.

Upon notification of selection to the Consultant Bench, the Consultant's SOQ offer will be held firm for the Period of Performance listed in Article B, Section III, Scope of Work. Selection to be on the Consultant Bench does not guarantee that a contract will be awarded.

If a firm selected for the Consultant Bench fails to enter into a contract, contract amendment, or task order 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 firm and enter into a contract with another firm on the Consultant Bench.

B. Contract Arrangements

MTC's Standard Consultant Contract is attached as *Appendix D*. If a Proposer wishes to propose a change to any standard MTC contract provision, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of requests for clarifications/exceptions for this RFQ. If no such change is requested, the Proposer will be deemed to accept MTC's standard contract provisions, unless such language is protested in accordance with Section C below. The contracts resulting from this RFQ will be Task Order based. Notwithstanding the foregoing, MTC reserves the right, in its sole discretion, to issue contracts in other formats but with substantially similar terms, where applicable, based on specific programmatic needs and the scope of work to be performed.

The selected Consultants will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1, Insurance Requirements*. Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements in *Appendix D-1*, within ten (10) days of MTC's notice to firm that it 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 for this RFQ. MTC will review the requests and issue an addendum if material changes requested by a prospective Proposer are acceptable. Objections to MTC determinations on requests to change insurance requirements, pursuant to the protest provisions of this RFQ, must be brought to MTC's attention no later than the deadline for protesting RFQ provisions or compliance with all material insurance requirements will be assumed.

C. Selection Disputes

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

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

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

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

The MTC Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Should a Proposer wish to appeal the decision of the MTC Executive Director, it may file a written appeal with the MTC Operations Committee, 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 Operations Committee's decision will be the final agency decision.

Authorization to award an agreement to a particular Proposer by MTC shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the MTC Executive Director or, if the decision of the MTC Executive Director is appealed, the issuance of the MTC Operations 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 Proposer believes any SOQ content contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer may request that MTC withhold from disclosure such proprietary materials by marking each page containing proprietary information, including financial information, if any, required to be submitted under Section VII of this RFQ, as confidential and shall include the following notice at the front of its 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 Proposer's competitive position. The Proposer requests that such data be used for review by MTC only, but understands that exemption from disclosure will be limited by MTC's obligations under the California Public Records Act. If an agreement is

awarded to the Proposer submitting this 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 Proposer 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 Proposer will be advised of the request. If the SOQ requests that MTC withhold such data from disclosure and MTC complies with the Proposer’s request, the Proposer 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 Proposer information); and pay any and all costs and expenses relating to the withholding of the Proposer information.

If the Proposer 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 Proposer shall not have a right to make a claim or maintain any legal action against MTC or its commissioners, officers, employees or agents in connection with such disclosure.

E. Key Personnel

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

F. Conflicts Of Interest

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

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

Whenever MTC is awarding a contract that involves the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts

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

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

G. Personally Identifiable Information

Proposer agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment F, Special Conditions Relating to Personally Identifiable Information of Appendix D, MTC Standard Consultant Contract.

H. Audit and Review Requirements

Not Used.

I. Web-Based Communication

Proposer agrees to submit all communication and required documentation, including but not limited to invoices, requests for contract modifications, etc. to the MTC Project Manager or his/her designee via a web-based system designated by MTC to which MTC will provide system access.

J. Payment, Sub-Contractor and Prevailing Wage Information

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

K. Cooperative Use

MTC, MTC SAFE, BATA, BAHA, and BAIFA may utilize this RFQ to obtain services, at the same terms and conditions included in this RFQ and firms SOQ's during the period of time that contracts resulting from this RFQ are in effect.

L. Disadvantaged Business Enterprise (DBE) Requirement

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

APPENDIX A, PRELIMINARY SCOPE OF WORK

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

There are multiple focus areas in which MTC seeks assistance. Within these focus areas, a significant portion of the assignments involve oversight of the Clipper[®] design-build-operate-maintain contractor, Cubic Transportation Systems, Inc. (“Clipper[®] Contractor”), which works under contract to MTC to implement and operate the Clipper[®] fare payment system, and the FasTrak[®] customer service contractor, Xerox. Assignments for support of the Next Generation Clipper[®](C2), next generation Fastrak[®] and EL implementation are anticipated. Assignments will require coordination with several stakeholders, including MTC, external entities including transit, bridge and EL operators, social service advocates, private entities, and the riding and driving public. Technology evaluations appear in several Service Categories. The intent is to address technology and equipment needs that are both immediate to the current system operations, as well as long term strategies that may require different or evolving solutions.

Services to be performed under this RFQ include the following Service Categories:

- A. Program Management
- B. Planning
- C. Operational Monitoring and Reporting
- D. Technology Oversight
- E. Communications and Customer Information Services
- F. Compliance and Risk Management Services

The on-call consultant assistance services that may be required shall include, but are not limited to, the detailed task types included below for each Service Category. Actual work assignments shall be as described in individual contracts or task orders that may be issued to the selected Consultants. Consultants may submit proposals for consideration for a single Service Category, single task type, or any combination of Service Categories or tasks.

A. Program Management

Consultant shall assist MTC in the management and administration of electronic payment program implementation and operations. Such program management involves overseeing discreet work functions and products, as well as larger and interrelated activities. Typical tasks may include:

- Scope development and general program management support;
- Schedule development and management, including monitoring progress and milestones;
- Budget development and management at the project and programmatic levels, including assistance with fund tracking and management reports;

- Meeting facilitation;
- Vendor and transit operator communication;
- Vendor negotiations;
- Engineer's estimates;
- Contract approach and preparation support;
- Design review and technology evaluations;
- Testing oversight;
- Implementation support (installations, maintenance, system upgrades, etc.);
- Punchlist facilitation;
- General project coordination; and
- Similar or related tasks relevant to program implementation and operations.

B. Planning

Consultant shall assist MTC in strategic and operational planning tasks, both with regard to the long range future of the tolling and electronic payment systems programs as well as options for refinement, management, and expansion of the current systems. Planning functions require balancing short, medium and long-term goals. MTC may request assistance with planning and analysis tasks including:

- Program strategy development;
- Governance model development;
- Schedule development;
- Goal determination;
- Risk analysis;
- Shared services;
- Public/private partnerships;
- Research into industry standards
- Staffing/organizational assessments;
- Cost/benefit analyses;
- Transit, toll or EL needs analyses;
- Fare or toll policies;
- Equipment needs;
- Implementation strategies;
- Technology evaluations;
- Funding identification; and
- Similar or related tasks relevant to program strategic and operational planning.

C. Operational Monitoring and Reporting

Customer shall assist MTC in its review and evaluation of the ongoing operations of the EL, tolling and electronic payment program(s). The goals of the operational monitoring and reporting focus function include benchmarking, verification that past problems have been rectified, identification of current problems, and verification of ongoing performance levels. Consultant shall work with various groups to ensure optimal and required performance, including MTC, the Clipper[®] Contractor, FasTrak[®] and EL contractors, partnering transit, bridge and EL operators, and various stakeholders. Typical tasks may include:

- Schedule monitoring;
- Establishing and refining Key Performance Indicators (KPIs) and other performance monitoring tools;
- Monitoring KPIs and other performance metrics;
- Operational monitoring of system/service performance, capacity, availability and asset management;
- Evaluating the effectiveness of monitoring tools;
- Identifying performance trends;
- Implementing and overseeing corrective action plans;
- General program review to identify areas of operational improvement;
- Report development for all activities listed above; and
- Similar or related tasks relevant to review and evaluation of ongoing program operations.

D. Technology Evaluation and Support

Consultant shall assist MTC in evaluation, input into design, and implementation of vendor technology for the benefit of the electronic payment programs. Consultant shall also provide support for the evaluation of complementary and/or alternative technology solutions that may be used to enhance or potentially replace existing systems. Where applicable, MTC may utilize Consultant to provide specific technology services. With this Service Category, MTC seeks Consultants with an understanding of technology that can be applied to the existing EL, tolling, and electronic payment programs, as well as their expansion using new technology as it matures.

Areas in which technology evaluation and support services are needed may include:

- General technology evaluations;
- Data management policy development;
- Payment technology review (smart card, radio frequency identification, image-based, and other automated fare or toll collection concepts);
- Customer Service Center operations;
- Mobile applications;
- Cloud computing;
- Financial processing and back office systems/services;
- Data architecture;
- Data analytics;
- Network and IT Systems design and implementation;
- Security (hardware and software);
- Quality Assurance and Testing oversight;
- Database and reporting systems configuration and management;
- Communications and network management;
- Fare payment media and devices (smart cards, Near Field Communications (NFC) enabled devices, faregates, card readers, toll tags, Ticket Vending Machines (TVMs), retail point of sale devices, etc.);
- Hardware, software, and systems engineering review;
- Web site optimization and e-commerce solutions; and

- Similar or related tasks relevant to evaluation, design and implementation of program technology.

E. Communications and Customer Information Services

Consultant shall assist staff in implementing public awareness, customer communication, customer education, outreach, and other information services for operational programs on an as-needed basis. The goals of this Service Category are to enhance the public's understanding and perception of operational programs; improve existing customers' experiences engaging with operational programs, products, and services through improved information dissemination and other initiatives; promote operational products and programs to non-participating members of the public; increase awareness and utilization of operational programs among limited-English proficiency customers, low-income customers, persons of color, and persons with disabilities, and ensure effective working relationships with project partners.

Typical Communications and Customer Information services tasks may include, but are not limited to:

- Support stakeholder communications;
- Develop communication plans, outreach and community based services;
- Perform market research;
- Develop creative content;
- Manage social media and website development and update projects;
- Support web site and application development projects with design, content and product recommendations;
- Assist with customer service and communications (e.g. service centers, kiosks, sign, email, direct mail); and
- Similar or related tasks relevant to program communications with customers and potential customers.

F. Compliance and Risk Management

Consultant shall assist staff in developing systems and procedures for risk management, claims avoidance, and ensuring programmatic compliance with federal, state and local governmental requirements, regulations, and reporting as well as payment, technology, financial and banking industry standards. Specific areas where MTC may seek Consultant's assistance in risk management and compliance matters may include:

- Analysis and interpretation of FTA, FHWA, Caltrans and other guidance documentation for purposes of compliance;
- Contract analysis for purposes of risk assessment, compliance requirements, and dispute avoidance;
- Development and implementation of dispute/claims avoidance and resolution methodologies;
- Analysis, interpretation, and recommendations for implementation of industry standards, including but not limited to Payment Card Industry Data Security Standard (PCI DSS) and Europay Mastercard Visa (EMV);

- Performance of formal analyses and reviews for federal, state, and local compliance purposes, including but not limited to Title VI equity or environmental justice analyses;
- Development of methodologies to track and report on risk management and compliance efforts; and
- Similar or related tasks relevant to program compliance and risk management.

APPENDIX B, RESOURCE RATE SCHEDULE

The Resource Rate Schedule below is available for download as an electronic spreadsheet. Use of the downloadable document is recommended, but not required so long as the format submitted is substantially similar and contains the rate breakdown referenced, together with all information required in Section VII, Form of SOQ, G. Cost Proposal. In completing this portion of the Cost Proposal, Proposer shall:

1. Provide hourly rates in US dollars for all named resources by resource name or position types for work listed in *Appendix A, Preliminary Scope of Work*, as applicable;
2. Specify rates for any subcontractor resources as a separate schedule;
3. Specify rates for as many named resources or position types as necessary for their response; and
4. Provide completed Resource Rate Schedules for FY 16/17, 17/18, and 18/19.

Prime Consultant

	<u>Resource Name or Type</u>	<u>Direct Rate</u>	<u>Overhead</u>	<u>G&A</u>	<u>Profit</u>	<u>Fully Burdened Rate</u>	<u>Profit Percentage</u>
1							
2							
3							
4							
5							
6							
7							
8							

SubConsultants

	<u>Resource Name or Type</u>	<u>Subcontractor Employee Direct Rate</u>	<u>SubContractor Overhead</u>	<u>SubContractor G&A</u>	<u>Sub Contractor Profit</u>	<u>Prime Administrative Fee</u>	<u>Fully Burdened Rate</u>
1							
2							
3							
4							
5							
6							
7							
8							

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 INSERT NAME OF CONSULTANT
For ELECTRONIC PAYMENTS CONSULTANT ASSISTANCE SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made and entered into as of the xx day of Month, 20___, by and between the Metropolitan Transportation Commission (herein called “MTC”), a regional transportation planning agency established pursuant to California Government Code § 66500, established pursuant to Streets and Highways Code § 30950 *et seq.*, and INSERT NAME OF CONSULTANT, (herein called “CONSULTANT”), a partnership, _____[state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the State of _____.

RECITALS

WHEREAS, MTC intends to obtain Consultant Assistance related to Electronic Payment Systems (EPS) (herein called the “Project”); and

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

1. **SCOPE OF SERVICES**

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

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

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

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

1.1 PROGRESS REPORTS

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

1.2 SUBMISSION OF CONTRACT DOCUMENTS

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

2. PERIOD OF PERFORMANCE

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

3. COMPENSATION AND METHOD OF PAYMENT

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

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

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

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

4. KEY PERSONNEL

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

5. AMENDMENTS

MTC reserves the right to request changes in the services to be performed by CONSULTANT. All such changes shall be incorporated in written amendments that specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the Executive Director or a designated representative and CONSULTANT

and specifically identified as amendments to the Agreement. The MTC Project Manager is not a designated representative, for purposes of approving an amendment.

6. TERMINATION

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

B. Termination for Default. If CONSULTANT does not deliver the work products specified in this Agreement in accordance with the delivery schedule or fails to perform in the manner called for in the Agreement, or if CONSULTANT fails to comply with any other material provision of the Agreement, MTC may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on CONSULTANT, setting forth the manner in which CONSULTANT is in default. If CONSULTANT does not cure the breach or describe to MTC's satisfaction a plan for curing the breach within the fifteen (15) day period, MTC may terminate the Agreement for default. In the event of such termination for default, CONSULTANT will be entitled to be reimbursed only for work performed in full compliance with the contract requirements as follows: For terminated deliverables-based Task Orders, CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables. For terminated time-and-materials Task Orders, CONSULTANT shall be paid for hours worked, plus authorized expenses, not to exceed the maximum payable under the terminated Task Order. Such reimbursement will be offset by any costs incurred by MTC to complete work required under the Agreement. In no event shall MTC be required to reimburse CONSULTANT for any costs incurred for work causing or contributing to the default. If CONSULTANT has any property in its possession belonging to MTC, CONSULTANT will

account for the same, and dispose of it in the manner MTC directs. MTC shall not in any manner be liable for CONSULTANT's actual or projected lost profits had CONSULTANT completed the services required by this Agreement.

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

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

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

8. INDEPENDENT CONTRACTOR

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

9. INDEMNIFICATION

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

A. Any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be alleged to have occurred, caused by any breach of the Agreement or negligent act or omission or willful misconduct of CONSULTANT or its officers, employees,

subconsultants or agents or any of them, arising from, under or in connection with this Agreement; or

B. Any allegation that materials or services provided by CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

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

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

10. DATA TO BE FURNISHED BY MTC

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

10.1 PERSONALLY IDENTIFIABLE INFORMATION

CONSULTANT agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment F, Special Conditions Regarding Personally Identifiable Information, attached hereto and incorporated herein by this reference.

10.2 NONDISCLOSURE OF CONFIDENTIAL INFORMATION

MTC may be required to make available to CONSULTANT certain confidential, non-public or proprietary information ("Confidential Information") for purposes of carrying out the Project. Confidential Information may be tangible, intangible, visual, oral, written, and/or

electronic information, present or future, and includes: (i) proprietary information learned through inspection of drawings, specifications or equipment; (ii) descriptions of proprietary processes, designs, functionality or know-how; (iii) proprietary software, programming data, code or information; and (iv) other information disclosed in writing and marked as “Confidential” or with a similar notice. As between MTC and CONSULTANT, Confidential Information shall remain the sole and exclusive property of MTC, and no license or other rights to Confidential Information or any works deriving from Confidential Information is granted or implied hereby. Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of CONSULTANT; b) CONSULTANT can demonstrate to have had rightfully in its possession prior to disclosure by MTC or its contractors, vendors or licensors; c) CONSULTANT rightfully obtains from a third party who has the right to transfer or disclose it; or (d) is required to be disclosed by law or applicable legal process.

CONSULTANT agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose such Confidential Information except for the business purpose underlying this Agreement, except as authorized in writing by MTC. CONSULTANT further agrees to disclose Confidential Information only to its directors, officers, employees and consultants who need to know such information, and who have agreed to be bound by the terms and conditions of this Agreement. Promptly upon the request of MTC, at any time and for any reason, CONSULTANT shall destroy or return to MTC, at MTC’s option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by MTC.

11. OWNERSHIP OF WORK PRODUCTS

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products (“Work Products”) prepared or assembled and furnished to MTC by CONSULTANT or its subconsultants pursuant to this Agreement shall be and are the property of MTC. MTC shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of CONSULTANT or in the hands of any subconsultant upon completion or termination of the work shall be immediately delivered to MTC. CONSULTANT hereby assigns to MTC ownership of any and all rights, title and interest in and to such Work Products, including ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the Work Product. CONSULTANT also agrees to execute all papers necessary for MTC to perfect its

ownership of the rights in the Work Product. Notwithstanding the above, "Work Products" are not intended nor shall they be construed to include CONSULTANT'S pre-existing intellectual property secured, developed, written, or produced by CONSULTANT prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; CONSULTANT shall retain all right, title and interest in any such pre-existing intellectual property.

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

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

12. SUBCONTRACTS

[FOR AGREEMENTS WITH SUBCONSULTANTS AT OUTSET]

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

[FOR AGREEMENTS WITH NO SUBCONSULTANTS AT OUTSET]

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

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between MTC and any subconsultants, and no subcontract shall relieve CONSULTANT

of his/her responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to MTC for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultants is an independent obligation from MTC's obligation to make payments to CONSULTANT.

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

13. ASSIGNMENT OF AGREEMENT

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

14. RECORDS

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

15. AUDITS

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

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

employers. Accordingly, CONSULTANT further covenants that it has made a complete disclosure to MTC of all facts of which CONSULTANT is aware upon due inquiry bearing upon any possible interest, direct or indirect, that it believes any member, officer, agent or employee of MTC (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by MTC.

18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

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

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

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

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

19. LAWS AND REGULATIONS

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

20. CLAIMS OR DISPUTES

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

CONSULTANT shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by MTC, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given MTC due written notice of a potential claim. The potential claim shall set forth the reasons for which CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

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

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

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

resolution pursuant to Article 24, DISPUTE RESOLUTION, or MTC may terminate the Agreement.

21. REMEDIES FOR BREACH

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

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

22. TEMPORARY SUSPENSION OF WORK

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

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

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

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

23. WARRANTY OF SERVICES

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

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

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

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

24. DISPUTE RESOLUTION

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

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

of senior management negotiations, the parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies, as set forth below.

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

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

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

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

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

25. CHOICE OF LAW

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

26. ATTORNEYS' FEES

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

27. PARTIAL INVALIDITY

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

28. BENEFIT OF AGREEMENT

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

29. NO THIRD PARTY BENEFICIARIES

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

30. ENTIRE AGREEMENT; MODIFICATION

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

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

METROPOLITAN TRANSPORTATION
COMMISSION

NAME OF CONSULTANT

Steve Heminger, Executive Director

Insert Appropriate Name, Title

ATTACHMENT A

Scope Of Work

Outline of Services

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

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

ATTACHMENT A-1 TASK ORDER PROCESS

Detailed Task Order Process:

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

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

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

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

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

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

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

Step 7 – Any services added to the Agreement by a Task Order shall be subject to all applicable conditions of the Agreement. Revisions to Task Orders shall require written approval by both the MTC **INSERT TITLE OF SECTION DIRECTOR** and CONSULTANT. Revisions to Task Orders shall require written approval by both the MTC **INSERT TITLE OF SECTION DIRECTOR** and CONSULTANT.

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

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

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

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

ATTACHMENT A-2
Task Order Form

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

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

A. Deliverables-based.

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

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

B. Time and Materials

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

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

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

METROPOLITAN TRANSPORTATION
COMMISSION

CONSULTANT

Insert name and title of section director
Date:

Insert name and title of authorized individual
Date:

Task Order Schedule

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

Detailed Description of Work

Task Order #: Title

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

ATTACHMENT B
Project Schedule

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

ATTACHMENT C
Compensation and Method of Payment

TASK ORDERS

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

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

C. Method of Payment. CONSULTANT shall submit invoices for services rendered no more frequently than on a monthly basis. Invoices shall identify work for which payment is requested by Task Order number (including fiscal year). All invoices will be dated, numbered in serial order, and signed by CONSULTANT. If applicable, CONSULTANT's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment F, Special Conditions Relating to Personally Identifiable Information.

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

For Task Orders authorizing time and materials payment, CONSULTANT shall submit invoices for services rendered on a monthly basis, covering fees and expenses for a single calendar month. Each invoice shall specify the work performed, hours worked, and amount due (by personnel), authorized expenses (with receipts for such expenses), the total amount claimed under the invoice and the amount paid to date under the Task Order.

ATTACHMENT D
Key Personnel Assignments

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

ATTACHMENT E
Insurance and Financial Security (Bond) Provisions

1. INSURANCE

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

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

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

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

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT's officers,

agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, 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 E (if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.

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

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

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.]

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

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

7. Employee Dishonesty/Crime Insurance. An Employee Dishonesty insurance policy covering CONSULTANT's employees for loss of or damage to money, securities or other property resulting from theft. The following limits of liability should apply: (a) Employee Dishonesty - \$250,000; and (b) Client Property Blanket Bond - \$250,000. CONSULTANT shall reimburse MTC for any and all losses within the deductible, for insured losses, the cost to prove the loss, accountants' fees, defense costs including attorneys' fees and any other fees associated with a claim. In lieu of a Client Property Blanket Bond, the policy shall contain a Joint Loss Payee endorsement or other Third Party coverage naming MTC.

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

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

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

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

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

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

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and

- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, CONSULTANT shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the work.

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

G. Certificates of Insurance. Prior to commencement of any work hereunder, CONSULTANT shall deliver to 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 CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant hereto, including, but not limited to, liability assumed pursuant to Article 9 of this Agreement.

2. FINANCIAL SECURITY (BONDS) NOT USED

3. ADDITIONAL INSUREDS

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

- NONE

ATTACHMENT F

Special Conditions Relating to Personally Identifiable Information

CONSULTANT will have access to personally identifiable information (“PII”) in connection with the performance of the Agreement. PII is any information that is collected or maintained by MTC or CONSULTANT that identifies or describes a person or can be directly linked to a specific individual. Examples of PII include **[insert a few types of PII, tailored to the contract]** name, address, phone or fax number, signature, date of birth, or credit card information, bank account number, or travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

1. Right to Audit

CONSULTANT shall permit MTC and its authorized representatives to audit and inspect: (i) CONSULTANT’s facilities where PII is stored or maintained; (ii) any computerized systems used to share, disseminate or otherwise exchange PII; and (iii) CONSULTANT’s security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures. The audit and inspection rights hereunder shall be for the purpose of verifying CONSULTANT’s compliance with this Agreement, and all applicable laws.

2. General Confidentiality of Data

All PII made available to or independently obtained by CONSULTANT in connection with this Agreement shall be protected by CONSULTANT from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to MTC. This includes, but is not limited to, the secure transport, transmission and storage of PII used or acquired in the performance of this Agreement.

CONSULTANT agrees to properly secure and maintain any computer systems (hardware and software applications) or electronic media that it will use in the performance of this Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied as appropriate to secure PII that may be used, transmitted, or stored on such systems in the performance of this Agreement.

CONSULTANT is prohibited from storing PII on portable media including, but not limited to, laptops, thumbdrives, disks and so forth.

Notwithstanding anything to the contrary in Article 14. Records, of this Agreement, CONSULTANT agrees to retain PII for no longer than **[Project Manager should insert time-frame which should be no longer than necessary for Consultant to carry out its contractual responsibilities under the Agreement. Special retention requirements apply to FasTrak® and Clipper® Program PII]**. At the conclusion of this retention period, CONSULTANT agrees to use Department of Defense (“DoD”) approved methods to permanently remove PII from any files. Discarded PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic disk, optical disk, and memory chips (“Storage Media”). CONSULTANT agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. CONSULTANT also agrees to use DoD approved methods to sanitize any Storage Media prior to discarding or when useful life has ended, whichever comes first. At the conclusion of the performance period of this Agreement, CONSULTANT shall submit a certification to the MTC Project Manager as follows: “All PII whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in Section 2. General Confidentiality of Data of Attachment F, Special Conditions Relating to Personally Identifiable Information.” These requirements shall survive termination or expiration of this Agreement.

3. Compliance with Statutes and Regulations

CONSULTANT agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 *et.seq.*) and in the California Streets and Highways Code Section 31490. In addition, CONSULTANT warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and MTC relating to the handling and confidentiality of PII, including the terms and conditions contained in this Attachment F, Special Conditions Relating to Personally Identifiable Information and agrees to indemnify MTC against any loss, cost, damage or liability by reason of CONSULTANT’s violation of this provision.

4. Subconsultants

MTC’s approval in writing is required prior to any disclosure by CONSULTANT of PII to a subconsultant or prior to any work being done by a subconsultant that entails receipt of PII. Once approved, CONSULTANT agrees to require such subconsultant to sign an agreement in

substantially identical terms as this attachment, binding the subconsultant to comply with its provisions.

5. Consultant Guarantees

CONSULTANT shall not, except as authorized or required by its duties by law, reveal or divulge to any person or entity any PII that becomes known to it during the term of this Agreement.

CONSULTANT shall keep all PII entrusted to it completely secret and shall not use or attempt to use any such information in any manner that may injure or cause loss, either directly or indirectly, to MTC.

CONSULTANT shall comply, and shall cause its employees, representatives, agents, subconsultants and subcontractors to comply, with such directions as MTC may make to promote the safeguarding or confidentiality of all its resources.

If requested by MTC, CONSULTANT shall sign an information security and confidentiality agreement provided by MTC and attest that its employees, representatives, agents, subconsultants and subcontractors involved in the performance of this Agreement shall be bound by terms of a confidentiality agreement with CONSULTANT substantially the same in its terms.

6. Notice of Security Breach

CONSULTANT shall immediately notify MTC when it discovers that there may have been a breach in security that has or may have resulted in compromise to PII. For purposes of this section, immediately is defined as within two hours of discovery. The MTC contact for such notification is as follows:

Privacy Officer
privacyofficer@mtc.ca.gov
(510) 817-5700

ATTACHMENT G
Subconsultant List

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

ATTACHMENT H

Federally Required Clauses

1. EQUAL EMPLOYMENT OPPORTUNITY

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

2. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

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

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

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

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

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

2.1. Performance of DBE Consultant and other DBE Subconsultants/Suppliers

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

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

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

2.2. Prompt Payment of Funds Withheld to Subconsultants

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

subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime contractors and subconsultants.

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

2.3. DBE Records

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

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

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

2.4. DBE Certification and Decertification Status

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

3. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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

4. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

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

5. STATE ENERGY CONSERVATION PLAN

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

6. ALLOWABILITY OF COSTS

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

7. RELEASE OF FUNDS WITHHELD FROM SUBCONSULTANTS

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

8. LICENSE FOR FEDERAL GOVERNMENT PURPOSES

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

9. IDENTIFICATION OF DOCUMENTS

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

"The preparation of this report has been financed in part by grants from the: [**select appropriate agency**] 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

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

11. AUDITS

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

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

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

pertinent books, documents, papers, and records of such subconsultant for the term specified above.

12. FLY AMERICA REQUIREMENTS.

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

13. ENERGY CONSERVATION.

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

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

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

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

15. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

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

16. DEBARMENT

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

17. CLEAN AIR AND WATER POLLUTION ACTS

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

18. LOBBYING

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

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

1. Local Agency: _____
3. Project Description:
4. Project Location:
5. Consultant's Name: _____

2. Contract DBE Goal:

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:			
<p>Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.</p> <p>20. Local Agency Representative's Signature _____ 21. Date _____</p> <p>22. Local Agency Representative's Name _____ 23. Phone _____</p> <p>24. Local Agency Representative's Title _____</p>		<p>IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.</p> <p>12. Preparer's Signature _____ 13. Date _____</p> <p>14. Preparer's Name _____</p> <p>15. Phone _____</p> <p>16. Preparer's Title _____</p>	

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

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

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT**CONSULTANT SECTION**

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

ATTACHMENT H-2

EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
 3. Project Description: _____
 4. Project Location: _____
 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 – CONSULTANT CONTRACT DBE COMMITMENT**CONSULTANT SECTION**

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

LOCAL AGENCY SECTION

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

ATTACHMENT H-3

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

Project Name			Agency	Contract Term:	NTE Amount:	Federal Aid #:
Prime Contractor	Contract Name	Address	City, State, Zip Code	Email	Phone	Fax

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

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

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

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

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

15. ORIGINAL DBE COMMITMENT AMOUNT \$ _____

16. TOTAL

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

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT

17. Contractor/Consultant Representative's Signature	18. Contractor/Consultant Representative's Name	19. Phone	20. Date
--	---	-----------	----------

I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED

21. Local Agency Representative's Signature	22. Local Agency Representative's Name	23. Phone	24. Date
---	--	-----------	----------

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

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

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

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

ATTACHMENT I
State Required Clauses

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

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

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

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

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

5. Remedies for Willful Violation:

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

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

ATTACHMENT I-2**NONDISCRIMINATION ASSURANCES**

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

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

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

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

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

Appendix C;

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

Appendix D;

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

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

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

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

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

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

11. CONSULTANT shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. CONSULTANT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of STATE assisted contracts. The California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies is incorporated by reference in this Agreement. Implementation of this program is a legal

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

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

APPENDIX A TO ATTACHMENT I-2

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

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

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

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

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

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

(a) withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

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

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

APPENDIX B TO ATTACHMENT I-2

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

(GRANTING CLAUSE)

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

(HABENDUM CLAUSE)

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

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

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

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

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

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

APPENDIX C TO ATTACHMENT I-2

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

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

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

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

(Include in deeds)*

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

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

APPENDIX D TO ATTACHMENT I-2

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

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

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

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

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

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

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

(Include in deeds)*

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

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

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

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

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

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

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

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

APPENDIX D-1, INSURANCE REQUIREMENTS

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

Yes (√)	<p>Please certify by checking the box below that required coverages will be provided within ten (10) business days of MTC’s notice to firm that it wishes to contract with the firm.</p>
—	<p><u>Workers' Compensation Insurance</u> with Statutory limits, and <u>Employer’s Liability Insurance</u> with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONSULTANT’s employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such <u>Workers Compensation & Employer’s Liability</u> may be waived, if and only for as long as CONSULTANT is a sole proprietor or a corporation with stock 100% owned by officers with no employees.</p>
—	<p><u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of CONSULTANT and CONSULTANT’s officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000 and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC.</p> <p>MTC and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT’s operations.</p>
—	<p><u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT’s officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability that shall not be less than \$1,000,000 combined single limit per accident.</p>
—	<p><u>Umbrella Insurance</u> in the amount of \$1,000,000 providing excess limits over Employer’s Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.</p>
—	<p><u>Errors and Omissions Professional Liability Insurance</u> for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim.</p> <p>The policy shall provide coverage for all work performed by CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between</p>

	<p>CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.</p>
—	<p><u>Property Insurance.</u> Property Insurance covering CONSULTANT'S own business personal property and equipment to be used in performance of its Agreement with MTC, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.</p>
—	<p><u>Employee Dishonesty/Crime Insurance.</u> An Employee Dishonesty insurance policy covering CONSULTANT's employees for loss of or damage to money, securities or other property resulting from theft. The following limits of liability should apply: (a) Employee Dishonesty - \$250,000; and (b) Client Property Blanket Bond - \$250,000. CONSULTANT shall reimburse MTC for any and all losses within the deductible, for insured losses, the cost to prove the loss, accountants' fees, defense costs including attorneys' fees and any other fees associated with a claim. In lieu of a Client Property Blanket Bond, the policy shall contain a Joint Loss Payee endorsement or other Third Party coverage naming MTC.</p>
<p>Consultant's obligation to provide the insurance described herein may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.</p> <p>Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.</p> <p>In the event that MTC seeks coverage as an additional insured under any Consultant insurance policy that contains a deductible or self-insured retention, Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Consultant, subconsultant, subcontractor, or any of their employees, officers or directors, even if Consultant or subconsultant is not a named defendant in the lawsuit.</p> <p>If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Consultant shall:</p> <ol style="list-style-type: none"> 1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of its Agreement with MTC or the beginning of any work under such Agreement; 2. Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and 3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work. 	

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

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

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

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

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

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

APPENDIX E – IRAN CONTRACTING ACT OF 2010
(Public Contract Code Section 2200 et seq.)

Prior to bidding on, submitting a SOQ or executing a contract or renewal for a Metropolitan Transportation Commission (MTC) contract for goods or services of \$1,000,000 or more, a Proposer must either: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your Proposer or financial institution name and Federal ID Number (if available) and complete one of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is not on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Proposer Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in</i>

OPTION #2 – EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a Proposer/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a SOQ for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Proposer Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or N/A)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

APPENDIX F, FEDERAL REQUIREMENTS

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

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

MTC will establish Disadvantaged Business Enterprise (DBE) goals for each contract, or for each task order issued under any 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 Proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

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

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

4. DBE PARTICIPATION GENERAL INFORMATION

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

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

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program web site at: <http://www.dot.ca.gov/hq/bep/>.
 - Click on the link in the left menu titled *Disadvantaged Business Enterprise*

- Click on *Search for a DBE Firm* link
 - Click on *Access to the DBE Query Form* located on the first line in the center of the page
 - Searches can be performed by one or more criteria
 - Follow instructions on the screen
- C. How to Obtain a List of Certified DBEs without Internet Access: DBE Directory - If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered from the Caltrans Publications Unit at (916) 263-0822, 1900 Royal Oaks Drive, Sacramento, CA 95815-3800.

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

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

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

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

Instructions for Certification:

1. By signing and submitting this SOQ, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, MTC may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to MTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. 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)] 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: _____ 2. Contract DBE Goal: _____
 3. Project Description: _____
 4. Project Location: _____
 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 _____ 23. Phone _____ 24. 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. 12. Preparer's Signature _____ 13. Date _____ 14. Preparer's Name _____ 15. Phone _____ 16. Preparer's Title _____

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

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

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT**CONSULTANT SECTION**

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

LOCAL AGENCY SECTION

- 17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
 - 18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
 - 19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
 - 20. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
 - 21. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
 - 22. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
 - 23. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
 - 24. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.
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APPENDIX F-4, LOCAL AGENCY CONSULTANT DBE INFORMATION

EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
 3. Project Description: _____
 4. Project Location: _____
 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 – CONSULTANT CONTRACT DBE COMMITMENT**CONSULTANT SECTION**

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

LOCAL AGENCY SECTION

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

APPENDIX F-5, DBE INFORMATION – GOOD FAITH EFFORTS

Federal-aid Project No. _____ Bid Opening Date _____

The Metropolitan Transportation Commission (MTC) will established a Disadvantaged Business Enterprise (DBE) goal for this project at the time of contract or task order issuance. 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.