

PROFESSIONAL SERVICES AGREEMENT

between

Delete the agencies that don't apply
METROPOLITAN TRANSPORTATION COMMISSION
AND SERVICE AUTHORITY FOR FREEWAYS AND EXPRESSWAYS
OR BAY AREA TOLL AUTHORITY

and

NAME OF CONSULTANT

for

SHORT PROJECT NAME

FISCAL YEARS 2009-10 to 2010-201X

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PROFESSIONAL SERVICES AGREEMENT
Between METROPOLITAN TRANSPORTATION COMMISSION
And SERVICE AUTHORITY FOR FREEWAYS AND EXPRESSWAYS
Or BAY AREA TOLL AUTHORITY
And INSERT NAME OF CONSULTANT
For INSERT BRIEF DESCRIPTION

THIS AGREEMENT is made and entered into as of the **xx** day of **Month**, 2011, by and between the Metropolitan Transportation Commission (herein called "MTC "), a regional transportation planning agency established pursuant to California Government Code § 66500 **OR** the Metropolitan Transportation Commission Service Authority for Freeways and Expressways (herein called "MTC SAFE"), a local public agency established pursuant to Streets and Highways Code § 2550 *et seq.*, **OR** the Bay Area Toll Authority (herein called BATA), established pursuant to Streets and Highways Code § 30950 *et seq.*, and **name of consultant**, (herein called "CONSULTANT"**"CONTRACTOR" may be substituted, if appropriate**), a **pick one of the following**: partnership, _____[state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the state of _____.

RECITALS

WHEREAS, MTC intends to **insert brief description of project** (herein called "the Project"); and

USE IF FEDERALLY FUNDED

WHEREAS, MTC has obtained federal funds (Capital/Technical Study Grant) from the Federal Transit Administration/Federal Highway Administration ("FTA"/"FHWA") of the United States Department of Transportation ("U.S. DOT") [**include the following only if over \$500,000**]: in the amount of \$____, which is ___ percent of the total cost of the Project to assist in the financing of the Project; and

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

WHEREAS, the parties hereto now wish to enter into an agreement ("the 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**

CONSULTANT's services are described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. CONSULTANT agrees to perform or secure

the performance of all specified services within the maximum payment specified in Article 3.X, subject to the prior written approval of a work plan by **name of Project Manager Manager**, (herein called "Project Manager") or a designated representative. As Project Manager, **name of Project Manager** is responsible for communication with CONSULTANT and the administration of this Agreement.

USE THE FOLLOWING FOR TASK ORDER CONTRACTS:

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, issued in accordance with Article 5 herein, TASK ORDERS AND AMENDMENTS. All Task Orders shall be developed according to the process established in Attachment B, Task Order Process, attached hereto and incorporated herein, and should include, at a minimum, a completed form as shown in Attachment B-1, 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.B. **name of Project Manager** (herein called "Project Manager") is the Project Manager of this Agreement. As Project Manager, **name of Project Manager** is responsible for communication with CONSULTANT and the administration of this Agreement.

ONLY USE 1.1 FOR COST PLUS FIXED FEE OR LABOR/HOUR CONTRACTS

1.1 PROGRESS REPORTS

CONSULTANT shall provide MTC with monthly/quarterly progress reports in [a form approved by the Project Manager] OR [in the form described in Task xxx].

2. PERIOD OF PERFORMANCE

CONSULTANT's services hereunder shall commence on or after **appropriate date, 2011**, [OR, if start date is conditioned on future occurrence: upon receipt of a Notice to Proceed issued by the Project Manager or a designated representative] and shall be completed no later than **appropriate date, 201X** [OR, if Project started with Notice to Proceed: within ____ months of the receipt of Notice to Proceed], unless extended by amendment or earlier terminated, as hereinafter provided. CONSULTANT's services shall be performed in accordance with the schedule included in Attachment B, Project Schedule, attached hereto and incorporated herein by this reference. **USE IN TASK ORDER CONTRACTS:** CONSULTANT's services shall be performed in accordance with the schedule included in each Task Order.

3. COMPENSATION AND METHOD OF PAYMENT

Choose 1 of the 4 options: firm fixed price (**entire section in blue**), or cost plus fixed fee (**entire section in dark purple**) or labor/hour (**entire section in red**), task order contracts (**section in orange**) delete the others.

For FIRM FIXED PRICE Use– all blue

A. Compensation. CONSULTANT shall be paid, as full compensation for the satisfactory completion of the work described in Attachment A, the firm fixed sum of agreed upon amount, which includes all applicable surcharges such as taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, subcontractors costs, travel, materials and supplies.

B. Progress Payments. Payment for CONSULTANT's services shall be due in the amounts indicated below, upon acceptance by Project Manager of the following deliverables or milestones, described in detail in Attachment A:

Task	Deliverables (#)	Amount Due
1	Do this (#1)	\$1,234
2	Do that (#2)	\$56,789
		0
		0
		0
Excel is inside Word Tables. Highlight field, hit F9 or Table Formula = Format \$.		\$58,023.00
		highlight #, hit F9

C. Maximum Payment. Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation to be paid CONSULTANT under this agreement exceed the sum of _____ **spell out the amount** dollars (\$_____).

D. Method of Payment. CONSULTANT shall submit an invoice identifying the project deliverable or milestone for which payment is sought no later than thirty (30) days after MTC's acceptance of such deliverable/milestone. **[USE IF DOT-FUNDED: A report on the Monthly Utilization of Disadvantaged Business Enterprises (DBE) First–Tier Subcontracts in the form set forth in Attachment E, attached hereto and incorporated herein, must be included with all invoices. MTC may withhold payment pending receipt of such report.]** Payment shall be made by MTC within thirty (30) days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative. All invoices shall be made in writing and delivered or mailed to MTC as follows:

Attention: Accounting Section
Metropolitan Transportation Commission
AND Service Authority for Freeways and Expressways
OR Bay Area Toll Authority
Joseph P. Bort MetroCenter
101 - 8th Street
Oakland, CA 94607-4700

FOR COST PLUS FIXED FEE

A. Compensation. CONSULTANT shall be compensated for its work on a cost plus fixed fee basis in general conformance with Attachment C, Cost and Price Analysis, attached hereto and incorporated herein by this reference, and within the maximum payment set forth below. CONSULTANT will be reimbursed by MTC for actual costs incurred for authorized and satisfactorily completed work and services rendered under this Agreement, plus a fixed fee, as provided below.

B. Maximum Payment. Compensation to CONSULTANT shall not exceed _____ dollars (hereinafter referred to as the "maximum payment"). Such maximum payment shall include all compensation for work performed and services rendered, all costs and expenses of supervision, labor, indirect costs, overhead, profit, subcontractors, supplies, materials, equipment or use thereof, and for all other necessary incidentals.

C. Costs. Subject to the aforesaid maximum, the estimated cost for the performance of the work under this Agreement is _____ dollars **estimated cost of Agreement [total cost minus fee]**. Allowability of costs shall be determined in accordance with 48 Code of Federal Regulations Part 31 **[or for non-profits, Office of Management and Budget Circular A-122]**. CONSULTANT shall use actual labor rates and a fixed overhead rate of insert rate of Direct Labor and Fringe Benefits. The services and costs of subcontractors, if any, shall be included with the services and costs of the CONSULTANT and will be paid by CONSULTANT and MTC shall have no obligation, financial or otherwise, to CONSULTANT's subcontractors.

D. Fixed Fee Payment. The fixed fee for work performed under this contract is _____ dollars (\$_.

(1) The fixed fee is included in the maximum payment set forth above in Article 3.B. It is understood and agreed that the fixed fee sum is a fixed amount which cannot be exceeded because of any differences between estimated and actual costs of performing the work required by this Agreement, and in no event shall the total of payments to CONSULTANT exceed the maximum set forth in Article 3.B, without the prior written authorization of MTC, as provided for in Article 5.

(2) The fixed fee will be prorated and paid monthly in proportion to the percentage of work required under this Agreement satisfactorily completed as approved by MTC.

E. Monthly Payment. CONSULTANT shall be paid by MTC on a monthly basis. CONSULTANT shall submit an invoice to MTC within thirty (30) days after the end of each month for which payment is sought covering work and services completed to the end of such month, not covered by previously submitted invoices. Invoices shall include an estimate of the percentage of work completed and shall identify the work for which payment is being requested, showing: (1) costs attributable to direct labor, including current and cumulative hours worked by key personnel (for support personnel, classifications may be shown in place of names) itemized by work task, if appropriate, with billing rates; (2) all other direct and indirect costs for which reimbursement is being requested; (3) items (1) and (2) for subcontractors; (4) the payable portion of the fixed fee sum; and (5) the amounts previously invoiced, the amount currently due, and the total amount paid or due, including this invoice. CONSULTANT shall also attach to each invoice such receipts or other information as may reasonably be required by MTC. Invoices will be dated, numbered in serial order, and signed by CONSULTANT. **[USE IF DOT-FUNDED: A report on the Monthly Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts in the form set forth in Attachment G, attached hereto and incorporated herein, must be included with all invoices. MTC may withhold payment pending receipt of such report.]**

MTC will pay invoices no later than thirty (30) days of their receipt and upon approval of the work done and the amount billed. Invoices will be approved by MTC, subject to subsequent audit by MTC of CONSULTANT's costs. All invoices shall be made in writing and delivered or mailed to MTC as follows:

Attention: Accounting Section
Metropolitan Transportation Commission
AND Service Authority for Freeways and Expressways
OR Bay Area Toll Authority
Joseph P. Bort MetroCenter
101 - 8th Street
Oakland, CA 94607-4700

F. Withheld Amounts and Final Payment. MTC shall withhold, as a retainage, 5% of the value of each payment due hereunder until all services required under this Agreement have been completed and accepted by MTC. Final payment of any balance due CONSULTANT, including any amounts withheld, will be made promptly after satisfactory completion of the work under this Agreement, and after receipt and written acceptance by MTC of the reports and working papers which are required to be furnished under this Agreement, and after any post audit of

contract costs which may be conducted by MTC. CONSULTANT acknowledges that certain costs may be disallowed as a result of such a post audit. **ADD BLUE LANGUAGE IF FEDERALLY FUNDED:** Notwithstanding the above, CONSULTANT is bound by the provisions of Article 12.C regarding release of withheld amounts to subcontractors who have satisfactorily completed work under the Agreement.

FOR LABOR - HOUR use ALL red text

A. Compensation. CONSULTANT shall be compensated for services based on the hourly rates for the key personnel set forth in Attachment C, Key Personnel Assignment, attached hereto and incorporated herein by this reference, which include all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, materials and supplies.

USE WHERE EXPENSES ARE PROVIDED FOR

B. Expenses. 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 CONSULTANT in accordance with 48 Code of Federal Regulations Part 31 [or for non-profits, Office of Management and Budget Circular A-122].

C. Maximum Payment. Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation **include if applicable: and reimbursement for expenses** to be paid CONSULTANT under this Agreement exceed the sum of _____ spell out the amount (\$ _____ **insert maximum expenditure limit**

D. Method of Payment. CONSULTANT shall submit invoices for services rendered on a monthly basis, identifying the work for which payment is requested; the hours worked; any authorized expenses, together with receipts for such expenses; the amount requested; and the cumulative amount billed and paid under this Agreement. [USE IF DOT-FUNDED: A report on the Monthly Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts in the form set forth in Attachment G, attached hereto and incorporated herein, must be included with all invoices. MTC may withhold payment pending receipt of such report.] Payment shall be made by MTC within thirty (30) days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative. All invoices shall be made in writing and delivered or mailed to MTC as follows:

Attention: Accounting Section
Metropolitan Transportation Commission
AND Service Authority for Freeways and Expressways
OR Bay Area Toll Authority
Joseph P. Bort MetroCenter
101 - 8th Street
Oakland, CA 94607-4700

OPTIONAL:

E. Withheld Amounts and Final Payment. MTC shall withhold, as a retainage, 5% of the value of each payment due hereunder until all services required under this Agreement have been completed and accepted by MTC. Final payment of any balance due CONSULTANT, including any amounts withheld, will be made promptly after satisfactory completion of the work under this Agreement, and after receipt and written acceptance by MTC of the reports and working papers which are required to be furnished under this Agreement, and after any post audit of contract costs which may be conducted by MTC. CONSULTANT acknowledges that certain costs may be disallowed as a result of such a post audit. **ADD BLUE LANGUAGE IF FEDERALLY FUNDED:** Notwithstanding the above, CONSULTANT is bound by the provisions of Article 12.C regarding release of withheld amounts to subcontractors who have satisfactorily completed work under the Agreement.

For task order contracts

A. Compensation. CONSULTANT shall be compensated for its work as specified in signed Task Orders. 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 C, Key Personnel Assignments, shall apply. The hourly rates in Attachment C include all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, materials and supplies.

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 CONSULTANT in accordance with 48 Code of Federal Regulations Part 31 [or for non-profits, Office of Management and Budget Circular A-122].

C. Maximum Payment. Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation to be paid CONSULTANT under this Agreement exceed the sum of seventy-five thousand dollars (\$75,000).

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

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

For Task Orders authorizing time and materials payment, CONSULTANT shall 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.

Payment shall be made by MTC within thirty (30) days of receipt of an acceptable invoice, and upon approval of the work done and the amount billed. **[USE IF DOT-FUNDED: A report on the Monthly Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts in the form set forth in Attachment G, attached hereto and incorporated herein, must be included with all invoices. MTC may withhold payment pending receipt of such report.]** Payment shall be made by MTC within thirty (30) days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative. All invoices shall be made in writing and delivered or mailed to MTC as follows:

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

4. KEY PERSONNEL ASSIGNMENTS

The key personnel to be assigned to this work by CONSULTANT, **for labor/hour contracts include their labor/hour hourly rates**, and the estimated hours to be supplied by each are set forth in Attachment C or D, Key Personnel Assignments, attached hereto and incorporated herein by this reference. Substitution of any of the personnel named in Attachment C/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 Project Manager or a designee. CONSULTANT shall maintain records documenting compliance with this Article, which 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.

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

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

For Task Order Contracts, change title of Article 5 to TASK ORDERS AND AMENDMENTS, to read as follows:

A. Task Orders. Task Orders shall be initiated and developed according to the process described in Attachment B, Task Order Process. 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). A draft Task Order, in the form included in this Agreement as Attachment B-1, Task Order Form, shall be provided to CONSULTANT for review and comment. Once the parties agree on terms, MTC shall prepare a final Task Order for signature by the MTC insert title of Section Director and CONSULTANT.

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.

[Preceding Amendment section becomes “B”].

6. TERMINATION

A. Termination for Convenience. MTC may terminate this Agreement, 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 DELIVERABLES-BASED CONTRACTS USE THIS LANGUAGE:** CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit, plus reasonable termination costs, not to exceed the maximum amount payable

for such deliverables, **FOR COST REIMBURSEMENT TYPE CONTRACTS USE THIS LANGUAGE:** CONSULTANT shall be reimbursed its costs and a pro rata share of its profit on work performed up to the time of termination, plus reasonable termination costs, up to the maximum amount payable under this Agreement. **FOR LABOR-HOUR CONTRACTS USE THIS LANGUAGE:** CONSULTANT shall be paid for hours worked and reimbursed for authorized expenses, plus reasonable termination costs, not to exceed the maximum amount payable for the terminated work. **FOR TASK ORDERS, INSERT:** 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, plus reasonable termination costs, not to exceed the maximum amount payable for such deliverables. For terminated time-and-materials Task Orders, CONSULTANT shall be paid for hours work, plus authorized expenses and reasonable termination costs, not to exceed the maximum 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.

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 for costs incurred, in accordance with 6.A above, offset by any costs incurred by MTC to complete work required under the Agreement, except that in no event shall MTC be required to reimburse CONSULTANT for any costs incurred for work causing or contributing to the default.

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 REQUIREMENTS

A. Minimum Coverages. 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, placed with insurers with a Best's rating of A-X or better.

1. Workers' Compensation Insurance in the amount required by the applicable laws, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence, 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 endorsement in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONSULTANT is a sole proprietor with no employees. **FOR BATA CONTRACTS, add the following, if applicable:** Should any bridge work require coverage for the United States Longshore Harbor Workers Act, CONSULTANT agrees to furnish proof of insurance if required.

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. Expense for Indemnitee's defense costs shall be outside of policy limits and such policy shall be issued on a Duty to Defend Primary Occurrence Form.

MTC and its commissioners, officers, representatives, agents and employees are to be named as additional insureds. **Add FTA/Caltrans (and its/their directors), as appropriate.** Such insurance as afforded by this endorsement shall be primary as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.

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

4. Umbrella Insurance in the amount of \$5,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance.

5. Errors and Omissions Professional Liability Insurance (if applicable) in an amount no less than \$2,000,000. **[use if contract involves receipt of personally identifiable information or other confidential information: Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage, first party privacy coverage, and media coverage.]** If such policy is written on a "Claims-Made" (rather than an "occurrence") basis, CONSULTANT agrees to maintain continuous coverage in effect from the date of the commencement of services to at least three (3)

years **(change to ten (10) years for public works projects)** beyond the termination or completion of services or until expiration of any applicable statute of limitations, whichever is longer. The policy shall provide coverage for all work performed by the 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 the CONSULTANT and any subcontractor/consultant shall relieve the CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by the CONSULTANT and any subcontractor/consultant working on behalf of the 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), debris removal, and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" ("All Risk") 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. If such insurance coverage has a deductible, the CONSULTANT shall also be liable for the deductible. **[Use #7 if contract involves receipt of personally identifiable information or handling of credit cards or funds]**

7. Employee Dishonesty/Crime Insurance. An Employee Theft 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 and for insured losses, the cost to prove the loss, accountants' fees, defense costs including attorneys 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.

B. Deductibles. Any deductible, or self-insured retention of \$100,000 or greater, shall be subject to the approval of MTC. Any other special coverage restrictive devices such as "coinsurance" must be declared and approved by the Project Manager prior to job commencement. Such approval will not unreasonably withheld.

C. Notice of Termination. All CONSULTANT policies shall provide that the insurance carrier shall give written notice to MTC at least 30 days prior to cancellation of the policy or policies (unless canceled for non-payment, then 10 days prior written notice will be given), and shall provide notice of such cancellation to MTC and any other additional insured.

D. 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. CONSULTANT agrees, upon written request by MTC, to furnish copies of such policies or endorsements, certified by an authorized representative of the insurer. **Optional for high-risk projects:** CONSULTANT agrees to furnish to the MTC Project Manager a copy of all Additional Insured endorsements required under the Agreement within sixty (60) days of the effective date of the Agreement.

E. 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.

F. Subconsultant's Insurance. CONSULTANT shall require each of its subconsultants to provide the aforementioned coverages, unless such coverages are waived or reduced in writing by the MTC Project Manager.

7.1 FINANCIAL SECURITY.

INCLUDE BOND LANGUAGE WHEN AGENCY FUNDS OR ASSETS ARE AT RISK.

Include all applicable bonds:

A. Concurrent with the execution and delivery of the Agreement and prior to the commencement of any work under the Agreement, CONSULTANT has provided, and shall maintain in effect for the term of the Agreement unless otherwise specified herein, the following types of bonds as financial security for the Project:

1. Fidelity Bond. A fidelity bond providing coverage to MTC for the dishonest acts of the CONSULTANT, its officers, directors, employees, agents, and subcontractors in an amount not less than \$_____ **Insert Amount Based On Risk**. If such bond contains a "conviction" clause, CONSULTANT shall advise MTC of the existence of this clause. If the bond contains a deductible or self-insured retention, CONSULTANT shall be solely responsible for the deductible or self-insured retention.

2. Performance Bond. A bond to guarantee the faithful performance of the Agreement in the amount of 100% of the total Agreement price.

3. Labor & Material Bond. A bond to guarantee payment of claims of laborers and materialmen/persons under subcontract to CONSULTANT. Such bond shall be in the amount of 50% [Change to 100% for Public Works Projects] of the total Agreement price.

The Performance and Payment Bonds shall in no event be construed to cap, liquidate, or otherwise modify or limit the amount of damages payable by CONSULTANT for breach of this Agreement.

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 other 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

CONSULTANT shall indemnify and hold harmless MTC, **Add FTA/FHWA, Caltrans, CHP, as appropriate** its/their commissioners, directors, officers, agents, and employees from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith), to the extent caused by any negligent or otherwise wrongful act or omission of CONSULTANT, its officers, agents, employees and subcontractors, or any of them, under or in connection with this Agreement; and CONSULTANT agrees at its own cost, expense and risk to defend any and all such claims, actions, suits, or other legal proceedings brought or instituted against MTC, **Add FTA/FHWA, Caltrans, CHP, as appropriate** its/their commissioners, directors, officers, agents, and employees, or any of them, arising out of such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

10. DATA TO BE FURNISHED BY MTC

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

CONSULTANT in the context of the Project shall be the property of MTC and subject to the provisions of Article 11.

11. OWNERSHIP OF WORK PRODUCTS

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products (“Work Products”) prepared or assembled and furnished to MTC by CONSULTANT or its subconsultants pursuant to this Agreement shall be the property of MTC upon payment by MTC of all amounts due CONSULTANT for such Work Products, and copies shall be delivered to MTC promptly upon completion of the work or upon an earlier termination of this Agreement. CONSULTANT hereby assigns to MTC ownership of all right, 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. **USE IF FEDERALLY FUNDED:** 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.

USE ONLY IF FEDERALLY FUNDED

11.1 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."

**USE BLUE LANGUAGE IN 11.2 IF CONSULTANT WILL BE HANDLING
PERSONALLY IDENTIFIABLE INFORMATION**

11.2 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/G/H, Special Conditions Regarding Personally Identifiable Information, attached hereto and incorporated herein by this reference."

USE BLUE LANGUAGE BELOW ONLY IF SUBCONTRACTING

12. SUBCONTRACTS

A. Subconsultants approved by MTC for subcontract work under this Agreement are listed in Attachment D or E, Subconsultant List, attached hereto and incorporated herein by this reference. 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 subcontractors, 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 subcontractors 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 subcontractors is an independent obligation from MTC's obligation to make payments to CONSULTANT.

C. Any substitution of subcontractors must be approved in writing by MTC's Project Manager in advance of assigning work to a substitute subcontractor.

For federally-funded contracts, include D & E below:

D. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.

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

13. ASSIGNMENT OF AGREEMENT

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

USE BLUE LANGUAGE IF FEDERAL FUNDED

14. RECORDS

CONSULTANT shall maintain full and adequate books, records, and accounts in accordance with generally accepted accounting practices. All such books, records, accounts, and any and all work products, materials, and other data relevant to its performance under this Agreement shall be retained by CONSULTANT for a minimum of **three (3) years following final payment to the CONSULTANT** or four (4) years following the fiscal year of the last expenditure under this Agreement, **whichever is longer**.

USE BLUE LANGUAGE IF FEDERALLY FUNDED

15. AUDITS

CONSULTANT shall permit MTC, **the U.S. DOT, FTA/ FHWA, and the Comptroller General of the United States**, **include Caltrans only if the funding is FHWA** and the California Department of Transportation (Caltrans), and **its/their** 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 a provision to the effect that the subcontractor agrees that MTC, **the U.S. DOT, FTA/ FHWA, include Caltrans only if the funding is FHWA** and Caltrans, **the Comptroller General of the United States**, or any of **its/their** duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor for the term specified above. The term "subcontract" as used in this clause excludes agreements not exceeding \$25,000.

16. NOTICES

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

the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups:

- Black American
- Asian-Pacific American
- Native American
- Women

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. The CONSULTANT, subrecipient 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, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

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

F. Concurrent with the execution of the Agreement, CONSULTANT shall execute Attachments F, Local Agency Proposer/Bidder DBE Information (Consultant Contracts) and F-1, Local Agency Proposer UDBE Commitment (Consultant Contracts), attached hereto and incorporated herein by this reference, and commits to the utilization of UDBEs, as specified in Attachment F-1.

17.2.1 PERFORMANCE OF DBE CONTRACTORS AND OTHER DBE SUBCONTRACTORS / 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 thirty 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.

17.2.2 PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONSULTANTS **use only if applicable**

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

Any subcontract entered into as a result of this Agreement shall contain the above provision.

17.2.3 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. A DBE CONSULTANT shall also show the date of work performed by its own forces along with the corresponding dollar value of the work.

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on Attachment ____ entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors," CEM-2402F (Exhibit 17-F in Chapter 17 of the

LAP), attached hereto and incorporated here by this reference, certified correct by CONSULTANT or its authorized representative and shall be furnished to the Project Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (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 Project Manager.

USE (1) AND (2) ONLY IF APPLICABLE

1) Prior to the fifteenth of each month, CONSULTANT shall submit documentation to MTC’s Project Manager showing the amount paid to DBE trucking companies. CONSULTANT shall also obtain and submit documentation to MTC’s Project Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, CONSULTANT may count only the fee or commission the DBE receives as a result of the lease arrangement.

(2) CONSULTANT shall also submit to MTC’s Project Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans’ Monthly DBE Trucking Verification, CEM-2404(F) form provided to CONSULTANT by MTC’s Project Manager.

17.2.4 DBE CERTIFICATION AND DE-CERTIFICATION STATUS

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify CONSULTANT in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to MTC’s Project Manager within 30 days.

17.2.5 MATERIALS OR SUPPLIES PURCHASED FROM DBES WILL COUNT TOWARDS DBE CREDIT, AND IF A DBE IS ALSO A UDBE, PURCHASES WILL COUNT TOWARDS THE UDBE GOAL UNDER THE FOLLOWING CONDITIONS:

A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. 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 % of the cost of the materials or supplies toward DBE goals. A 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 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 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 regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which 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.

17.3 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).

17.4 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.

17.5 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).

INCLUDE 17.6 IF FEDERALLY FUNDED OVER \$25,000

17.6 DEBARMENT

CONSULTANT certifies that neither it, nor any of its participants, principals or subcontractors is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 49 CFR Part 29, by any Federal agency or department.

INCLUDE 17.7 & 17.8 IF FEDERALLY FUNDED OVER \$100,000

17.7 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).

17.8 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.

18. SOLICITATION OF CONTRACT

CONSULTANT warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than bona fide employees working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, MTC shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from CONSULTANT's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

19. PROHIBITED INTERESTS

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

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

19.1 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 the CONSULTANT to damages incurred by the MTC in addressing organizational conflicts that arise out of work performed by CONSULTANT, or to termination of this Agreement for breach.

INCLUDE BLUE LANGUAGE ONLY IF STATE OR FEDERALLY FUNDED; A-87 applies to state and local governments; A-122 applies to non-profits; 48 CFR Part 31 applies to consultants

20. LAWS AND REGULATIONS

CONSULTANT shall comply with any and all laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government, including but not limited to MTC, [the U.S. DOT, FTA/FHWA and Caltrans](#) that relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations and procedural requirements which are imposed on MTC as a recipient of federal or state funds are hereby in turn imposed on CONSULTANT [including but not limited to 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, and 49 Code of Federal Regulations Part 18, which are herein incorporated by this reference and made a part hereof.](#)

21. REMEDIES FOR BREACH

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MTC or 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. CHOICE OF LAW

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

23. MEDIATION

Prior to the initiation of any legal proceedings, the parties of this Agreement agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation,

application or enforcement of this Agreement to non-binding mediation. Such mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The Party seeking to initiate mediation shall do so by submitting a formal, written request to the other party to this Agreement. This section shall survive completion or terminations of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceeding to litigate such claim or dispute under the laws of the State of California.

24. ENTIRE AGREEMENT

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

25. PARTIAL INVALIDITY

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

26. BENEFIT OF AGREEMENT

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

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

METROPOLITAN TRANSPORTATION
COMMISSION SERVICE AUTHORITY FOR
FREEWAYS AND EXPRESSWAYS or BAY
AREA TOLL AUTHORITY

NAME OF CONSULTANT

Steve Heminger, Executive Director

Insert Appropriate Name, Title

ATTACHMENT A

Scope Of Work

Outline of Services

The services to be performed by CONSULTANT shall consist of services requested by the Project Manager or a designated representative including, but not limited to, the following:

DELETE B AND B-1 IOF NOT TASK ORDER CONTRACT
ATTACHMENT B, 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 (PM), or designee, prepares a draft Task Order to issue to CONSULTANT. The 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. The proposal should follow the Task Order Form format specified herein Appendix B.

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 PM may solicit early feedback from the MTC **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 **title of section director**, for review and approval. The MTC **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 – 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 8 – 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 9 – 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.*

APPENDIX B-1
Task Order Form

1. Task Order No. (include FY)	
2. Title of Task:	
3. MTC or BATA 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</u> and <u>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 11 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

title of section director

Date: _____

Date _____

Task Order Schedule

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

Detailed Description of Work

Task Order #: Title

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

ATTACHMENT B
Project Schedule

Task #	Work Performed/Deliverables (#)	<u>Completion Date</u>

ATTACHMENT C
Cost and Price Analysis

ATTACHMENT C or D
Key Personnel Assignments

USE COLUMN IN BRACKETS IF LABOR-HOUR*

	<u>Name</u>	<u>*[Rate/hour]</u>	<u>Est. hours</u>	<u>Task Description</u>
6.		\$xx		
7.				
8.				
9.				
10.				
11.				
12.				
13.				

ATTACHMENT E
Subconsultant List

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

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

ATTACHMENT E

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 (non-UDBE)	BA UDBE	W UDBE	APA UDBE	NA UDBE			
				\$1	\$1	\$1	\$1	\$1	\$1			\$1
				\$1	\$1	\$1	\$1	\$1	\$1			\$1
				\$1	\$1	\$1	\$1	\$1	\$1			\$1
				\$1	\$1	\$1	\$1	\$1	\$1			\$1
				\$1	\$1	\$1	\$1	\$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 UDBE Commitment			Total:	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00			

highlight +
F9 = math

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

**INSTRUCTIONS - LOCAL AGENCY PROPOSER DBE INFORMATION
(CONSULTANT CONTRACTS) (Revised 03/09)**

SUCCESSFUL PROPOSER:

The form requires specific information regarding the consultant contract: Agency, Location, Project Description, Federal Aid Project Number (assigned by Caltrans-Local Assistance), Proposal Date, and Successful Proposer's Name.

The form has a column for the Description or Services to be Subcontracted by DBEs. The DBE should provide a certification number to the prime consultant. The form has a column for the Names of DBE certified consultants to perform the work (must be certified on the date the proposal is received and include DBE address and phone number). Enter DBE prime consultant's and subconsultants' certification numbers. The prime consultant shall indicate all work to be performed by DBEs including, if the prime consultant is a DBE, work performed by its own forces.

Enter the Total Claimed DBE Participation percentage of items of work in the total DBE Dollar Amount column. (If 100% of item is not to be performed by the DBE, describe the exact portion of time to be performed by the DBE.) See Notice to Proposers/Bidders Disadvantaged Business Enterprise Information to determine how to count the participation of DBE firms.

Exhibit 10-O (2) must be signed and dated by the successful proposer at contract execution. Also list a phone number in the space provided and print the name of the person to contact.

For the successful proposer, Local agencies should complete the Contract Award Date and Federal Share fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of contract execution. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

District DBE Coordinator should verify that all information is complete and accurate. Once the information has been verified, the **District Local Assistance Engineer** signs and dates the form.

**INSTRUCTIONS - LOCAL AGENCY PROPOSER- UD BE COMMITMENT
(CONSULTANT CONTRACTS) (Revised 03/09)**

ALL PROPOSERS:

PLEASE NOTE: It is the proposer's responsibility to verify that the UD BE(s) falls into one of the following groups in order to count towards the UD BE contract goal: 1) Black American; 2) Asian-Pacific American; 3) Native American; 4) Women. This information shall be submitted with your proposal. Failure to submit the required UD BE commitment will be grounds for finding the proposal nonresponsive

UD BE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups:

1. Black American
2. Asian-Pacific American
3. Native American
4. Women

The form requires specific information regarding the consultant contract: Agency, Location, Project Descriptions, Federal Aid Project Number (assigned by Caltrans-Local Assistance), Proposal Date, Proposer's Name, and Contract Goal.

The form has a column for the Work Item Number (or Item No's) and Description or Services to be Subcontracted to UD BEs. The UD BE should provide a certification number to the Consultant. Notify the Consultant in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of certified UD BEs to perform the work (must be certified on the date proposals are received and include UD BE address and phone number). Enter the UD BE prime consultant and subconsultant certification numbers. Prime consultants shall indicate all work to be performed by UD BEs including, if the prime consultant is a UD BE, work performed by its own forces.

There is a column for the total UD BE percentage. Enter the Total Claimed UD BE Participation percentage of items of work submitted with the proposal pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the UD BE, describe exact portion of time to be performed or furnished by the UD BE.) See Notice to Bidders/Proposers Disadvantaged Business Enterprise Information to determine how to count the participation of UD BE firms. Note: If the proposer has not met the contract goal, the local agency must evaluate the proposer's good faith efforts to meet the goal in order to be considered for award of the contract.

Exhibit 10-O (1) must be signed and dated by the consultant proposing. Also list a phone number in the space provided and print the name of the person to contact.

For the Success Proposer only, local agencies should complete the Contract Award Date and Federal Share fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of award. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

District DBE Coordinator should verify that all information is complete and accurate. Once the information has been verified, the **District Local Assistance Engineer** signs and dates the form.

USE IF FEDERALLY FUNDED. Consultant must submit form with their invoice on a monthly basis (document set up: landscape, letter sized)

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

Attachment H
Special Conditions Relating to Personally Identifiable Information:

This clause is tailored to the ClipperSM program. Please consult with the Office of General Counsel for its use with other programs involving PII.

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, including that individual’s account. Examples of PII include name, address, phone or fax number, signature, date of birth, ClipperSM account number, 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, [the US DOT, FTA, FHWA, the Comptroller General of the United States, and/or the State of California,] and [its/their] 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 or any other financial, statistical, technical or other data and information related to the ClipperSM Program that are designated confidential by MTC and made available to CONSULTANT in order to carry out this contract, (“Confidential Information”) 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 data used or acquired in the performance of this Agreement.

CONSULTANT agrees to properly secure and maintain any computer systems (hardware and software applications) 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 data, including Confidential Information, which may be used, transmitted, or stored on such systems in the performance of this Agreement.

CONSULTANT agrees to retain PII for no longer than the time-frame specified by MTC. At the conclusion of this retention period, CONSULTANT agrees to use Department of Defense (“DOD”) approved software to wipe any disks containing PII. Hard drives and computers shall be reformatted and reimaged in an equivalently secure fashion. CONSULTANT agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine.

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.*). 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 information handling and confidentiality of data and agrees to indemnify MTC against any loss, cost, damage or liability by reason of CONSULTANT's violation of this provision.

4. Subconsultants

MTC approval in writing is required prior to any disclosure by CONSULTANT of Confidential Information to a subconsultant or prior to any work being done by a subconsultant that entails receipt of Confidential Information. 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 Confidential Information which becomes known to it during the term of this Agreement.

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

CONSULTANT shall comply, and shall cause its employees, representatives, agents and subcontractors to comply, with such directions as MTC may make to ensure 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, 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 which has or may have resulted in compromise to Confidential Information. 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