



METROPOLITAN
TRANSPORTATION
COMMISSION

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June 25, 2012

REQUEST FOR PROPOSALS (RFP)

Climate Initiatives Program

Bay Area Electric Vehicle Promotional Campaign Letter of Invitation

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Adrienne J. Tissier, Vice Chair
San Mateo County

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U.S. Department of Housing
and Urban Development

Tom Bates
Cities of Alameda County

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Cities of Santa Clara County

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U.S. Department of Transportation

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Ken Yeager
Santa Clara County

Steve Heminger
Executive Director

Ann Flemer
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

Dear Consultant:

The Metropolitan Transportation Commission (MTC), in partnership with the Bay Area Air Quality Management District (BAAQMD) and the Bay Area Electric Vehicle (EV) Strategic Council (the Bay Area's executive forum on electric vehicle education and adoption), invites your firm to submit a proposal to assist MTC, BAAQMD and EV Strategic Council in developing the Electric Vehicle Promotional Campaign for the Bay Area.

This letter, together with its enclosures, comprises the Request for Proposal (RFP) for the Electric Vehicle Promotional Campaign. You may download a copy of the RFP from MTC's website at <http://procurements.mtc.ca.gov>. Responses should be submitted in accordance with the instructions set forth in this RFP.

Proposal Due Date

Interested firms must submit one (1) original and six (6) copies, as well as one electronic PDF version, of their proposal by **4:00 pm, Tuesday, July 24, 2012**. *Proposals received after that date and time will not be considered.* Proposals shall be considered firm offers to provide the services described for a period of ninety (90) days from the time of submittal.

MTC Point of Contact

Ursula Vogler will be MTC's Project Manager and point of contact for this contract. Proposals and all inquiries relating to this RFP shall be submitted to Ursula Vogler, Project Manager, at the address shown below. For telephone inquiries, call (510) 817-5785. E-mail inquiries may be directed to uvogler@mtc.ca.gov.

Ursula Vogler
Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Consultant Qualifications

Proposals must demonstrate that the Consultant meets the following minimum qualifications to be eligible for consideration for this project.

- Project manager who has played a similar role on a minimum of two (2) projects in the last five (5) years prior to the date of this RFP in developing social marketing campaigns; and
- Each project team member other than support staff has a minimum of two (2) years experience working on social marketing campaigns.

Disadvantaged Business Enterprise Participation

Effective June 2, 2009, the California Department of Transportation (Caltrans) requires recipients of DOT grant funds through Caltrans to impose 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.

MTC has established an Underutilized Disadvantaged Business Enterprise (UDBE) contract goal of **1.2%** for contracts entered into as a result of this RFP.

Proposers are required to document their activities in the solicitation and selection of subconsultants on *Appendices D-3, D-4, and D-5*, the Local Agency Proposer UDBE Information (Consultant Contracts), Local Agency Proposer DBE Information (Consultant Contracts), and UDBE Information-Good Faith Efforts respectively. A report on the Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts must be included with all invoices. MTC may withhold payment pending receipt of such report. For the complete DBE participation provisions applicable to this procurement, see Section VI.H of the RFP and *Appendix D*.

Scope of Work, Budget and Schedule

A summary of anticipated work tasks for the project is provided in *Appendix A, Scope of Work*. All work will be paid in lump sums based on deliverables as described.

It is anticipated that a maximum of eighty thousand dollars (\$80,000) is currently available for the work described in this RFP.

MTC expects the work to commence on or about August 27, 2012 and to be completed no later than June 30, 2013.

Proposers' Conference and Requests for Clarification or Exceptions

A Proposers' Conference will be held at 1 p.m. on Monday, July 9, 2012 at the Joseph P. Bort MetroCenter Building, 101 8th Street, Oakland, in MTC's Claremont Conference Room.

Any addenda will be posted on MTC's website. All potential proposers are responsible for checking the website for any addenda to the RFP documents.

Any requests for clarification of or exceptions to RFP requirements must be received by MTC no later than 4:00 p.m., Monday, June 13, 2013, to guarantee response or consideration.

Proposal Evaluation

Proposals will be evaluated in accordance with the evaluation factors listed in *Section V* of this RFP. MTC reserves the right to accept or reject any or all proposals submitted, waive minor irregularities in proposals, request additional information or revisions to offers, and to negotiate with any or all proposers. Any contract award will be to the firm that presents the proposal that, in the opinion of MTC, is the most advantageous to MTC, based on the evaluation criteria in *Section V*.

Consultant Selection Timetable

1:00 p.m., Monday, July 9, 2012	Proposers' Conference at Joseph P. Bort MetroCenter 101 Eighth Street, Oakland, CA 94607, Claremont Conference Room, Second Floor
4:00 p.m., Friday, July 13, 2012	Closing date/time for receipt of requests for clarification/exceptions
No later than three (3) working days prior to the date proposals are due.	Deadline for protesting RFP provisions
4:00 pm, Tuesday, July 24, 2012	Closing date/time for receipt of proposals
Monday, August 6, 2012	Interviews (if held)
Monday, August 27, 2012	Executive Director's approval (approximate date)

General Conditions

MTC will not reimburse any Consultant for costs related to preparing and submitting a proposal.

All materials submitted by proposers are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt. (See *Section VI.G* of RFP).

A synopsis of MTC's contract provisions is enclosed for your reference as *Appendix C*. Proposers may request a complete example of MTC's professional services contract document. 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 listed above. If no such change is requested, the Consultant will be deemed to accept MTC's standard contract provisions.

The selected Consultant will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix C-1*. Consultant agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix C-1, Insurance Requirements*, within ten (10) days of MTC's notice to firm that it is the successful proposer. Requests to change MTC's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions listed above. 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 must be brought to MTC's attention no later than the date for protesting RFP provisions above. If such objections are not brought to MTC's attention consistent with the protest provisions of this RFP, compliance with all material insurance requirements will be assumed.

As this project is funded, in part, with FTA funds, the resulting contract will be subject to the federally required provisions included in *Appendix D - Department of Transportation Requirements*. Additional State of California requirements are included at *Appendix E*.

Authority to Commit MTC

Based on an evaluation conducted by an evaluation panel, the Executive Director will approve the selected Consultant, which will commit MTC to the expenditure of funds in connection with this RFP.

Thank you for your interest.

Sincerely,



Steve Heminger
Executive Director

SH:UV

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REQUEST FOR PROPOSALS

to the

METROPOLITAN TRANSPORTATION COMMISSION

for

ELECTRIC VEHICLES PROMOTIONAL CAMPAIGN

Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

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I. BACKGROUND AND PROJECT DESCRIPTION

A. Background

The Bay Area produces greenhouse gas (GHG) emissions at three times the world average, and the single largest source of these emissions — some 40 percent — comes from transportation. The California Global Warming Solutions Act (Assembly Bill 32), signed in 2006, mandates a reduction in GHG emissions from all sources to 1990 levels by the year 2020. Reducing emissions to this level means cutting approximately 30 percent from business-as-usual emissions projected by 2020, or about 15 percent from today's levels. Adding momentum to this effort is Senate Bill 375, 2008 legislation that mandates the California Air Resources Board work with regional agencies like MTC and the Association of Bay Area Governments (ABAG) to curb sprawl and reduce GHG emissions.

In December 2009, MTC programmed \$80 million to implement the Climate Initiatives Program, a multi-faceted program aimed at reducing transportation-related emissions and vehicle miles traveled (VMT), while also informing the region as to the most effective strategies to reduce emissions. The Climate Initiatives Program consists of four main elements: 1) public education/outreach; 2) Safe Routes to Schools (capital program and creative grants); 3) Innovative Grants; and 4) program evaluation. The main focus of the public education and outreach program is to reduce GHG emissions by encouraging Bay Area residents to alter their transportation-related behavior from using a single-occupancy fuel vehicle to alternative modes and vehicle types. The electric vehicle promotional campaign will focus on educating the public about electric vehicles and encouraging demand for electric vehicles in the Bay Area.

MTC, in partnership with the Bay Area Air Quality Management District (BAAQMD) and the EV Strategic Council, seeks Consultant assistance to create an electric vehicle promotional campaign for the Bay Area that will increase demand among Bay Area residents for plug-in electric and plug-in electric hybrid vehicles. The campaign will accomplish this by developing an electric vehicles promotional campaign aimed at building awareness, action and demand for plug-in electric (PEV) and plug-in hybrid electric vehicles (PHEV) in the Bay Area.

These objectives will be accomplished with input from ABAG and the Bay Conservation and Development Commission (BCDC), in addition to MTC and BAAQMD, under the auspices of the Joint Policy Committee (JPC).

B. Project Description and Objectives

The electric automobile's history is a long one, full of interesting twists and turns that had many thinking the concept obsolete more than once over the past century. As a pre-cursor to the gasoline-fueled car, the first successful electric automobile in the United States was built in 1891 in Iowa. By 1900, 28% of the over 4,000 cars produced in the United States were powered by electricity. While the future looked bright for electric vehicles at the dawn of the last century, the slow and uneven spread of electrification would remain a major impediment to their wide adoption and use. The combination of a lack of charging infrastructure and the mass production of the internal combustion engine vehicles lessened the demand for the electric vehicle, which became almost extinct by the 1930's. Throughout the past few decades, interest in electric vehicles has been mixed, with car companies, government agencies and the consumer having a luke-warm motivation to regulate, manufacture and purchase electric vehicles.

Times have changed, however. With the impacts on our climate from transportation sources and our dependence on fossil fuels that have limited supply, we have been motivated to, once again, try electric vehicles as a serious transportation alternative to the combustion engine vehicle. Major transportation manufacturers have begun manufacturing plug-in electric (PEV) and/or plug-in hybrid electric vehicles (PHEV); those that have come to market are enjoying modest success, with building demand. If we are to push the concept of the electric vehicle from one of novelty to one of mainstream acceptance, we will need to educate the Bay Area public about the electric vehicle by dispelling old myths and encouraging use. A region wide education, awareness and encouragement campaign will help to demonstrate to the Bay Area public the mainstream appeal of PEVs and PHEVs by providing accurate, real-world information on the vehicle's performance and consolidate information on Bay Area charging infrastructure. Simultaneously, the campaign will help the Bay Area continue its reputation as the U.S. technology and innovation hub.

MTC, in partnership with BAAQMD and EV Strategic Council seek a Consultant or Consultant team to develop an electric vehicles promotional campaign aimed at building awareness, action and demand for plug-in electric (PEV) and plug-in hybrid electric vehicles (PHEV) in the Bay Area. Increasing the number of PEVs and PHEVs will result in millions of gallons in fuel savings annually, stimulate the local economy, create jobs, reduce greenhouse gas emissions and improve public health.

The purpose of the Electric Vehicle Promotional Campaign is to:

- Educate Bay Area residents about electric vehicles, including vehicle operation, differentiation between vehicle types and vehicle charging (e.g., charging station locations, charge times, miles per charge, etc.);
- Change the behavior of Bay Area drivers to purchase plug-in electric vehicles (PEV) and plug-in hybrid electric vehicles (PHEV), or use PEV or PHEV when offered the choice;
- Create awareness of the benefits of the use of electric vehicles (e.g., cost savings, convenience, regional economic and job benefits, environmental and health benefits, “fun to drive” and “cool factor”);
- Promote the Bay Area identity as a center for high tech and green culture; and
- Motivate individuals to reduce their contribution to Bay Area GHG emissions.

The Consultant will develop a campaign strategy over the next four to six months, establishing the activities that will be used for the promotional campaign and result in the scope and schedule for implementation.

The Consultant shall develop the overall strategy for the following elements:

- Campaign plan, including a description of the program goals, expected behavioral changes and campaign activities;
- Branding recommendations, including development of a strategy for the brand and promotion of the brand, development of brand guidelines, language and graphic treatments to promote the brand;
- Marketing and promotion plan, including behavior change goals, communications and messaging strategies, marketing tactics, promotions and public outreach strategies, including region-wide and local events;

- Strategy for how to manage any competing electric vehicle campaigns/activities in the Bay Area in order to ensure a consistent message;
- Partnership and resource leveraging, including partnerships with various public and private organizations, including car associations and individuals to join in the outreach efforts;
- Market research, including review of existing research, Web surveys, focus groups and literature reviews in order to identify and understand target audience; and
- Program goals and evaluation plan, including how the campaign will be evaluated to determine its impact on PEV and PHEV perceptions and use.

II. PROPOSER MINIMUM QUALIFICATIONS AND REQUIREMENTS

Proposals must demonstrate that the Proposer meets the following minimum qualifications to be eligible for consideration for this project.

- Project manager who has played a similar role on a minimum of two (2) projects in the last five (5) years prior to the date of this RFP in developing social marketing campaigns; and
- Each project team member other than support staff has a minimum of two (2) years experience working on social marketing campaigns.

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

A. Scope of Work

A summary of work tasks for the project is provided in *Appendix A, Scope of Work*, which describes the type of work that MTC is requesting in this RFP.

B. Period of Performance

MTC expects the work to commence on or about August 27, 2012 and to be completed by June 30, 2013.

C. Budget

MTC has budgeted a maximum of eighty thousand (\$80,000) for this effort through fiscal year 2012-2013.

D. Personnel

Any change in key staff persons identified in the contract is subject to the approval of MTC. Removal by the Consultant of any key staff persons identified in the contract without written consent of the MTC Project Manager may be considered a material breach of contract.

IV. PROPOSAL FORM

Proposers must submit one (1) original and six (6) hard copies and one electronic copy in PDF format of their proposal to MTC, at the address listed on page 1 of the Letter of Invitation, by **4:00 pm, Tuesday, July 24, 2012**, to be considered. Proposal content and completeness are most important. Clarity is essential and will be considered in assessing the proposer's capabilities. Each proposal should include:

A. Transmittal Letter

Proposals must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and the name and telephone number of a contact person.

B. Title Page

Proposals must include a title page that includes the RFP subject, the name of the proposer's firm, local address, telephone number, name of contact person, and the date.

C. Table of Contents

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

D. Overview and Summary

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

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

E. Preliminary Work Plan

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

1. Discuss how the Consultant will conduct the identified tasks, identify deliverables, and propose a preliminary schedule. The proposal should discuss the tasks in sufficient detail to demonstrate a clear understanding of the project. The schedule should show the expected sequence of tasks, subtasks and milestones.
2. Provide a staffing plan for each task. Identify all key personnel and their roles and responsibilities for the Project. Include a work history for each person identified.

F. Qualifications and References

1. Describe proposed team's qualifications specific to the requirements set forth in *Section II, Proposer Minimum Qualifications and Requirements*. Identify the personnel, including subcontractors' personnel, whose expertise or experience addresses each of the specified needs.
2. Provide a succinct description (one page maximum) of any previous projects similar to the services requested, indicating the project title, duration, budget, sponsoring agency and sponsor project manager, and roles played by individuals proposed for this study. Include the name of the agency for whom the work was performed, year performed, name of the contact person and their telephone number.
3. Provide at least one sample of a written report or memo prepared by key members of the Consultant team, identifying the authors. Only one copy is required, and the sample will be returned after proposal evaluation, upon prompt request.
4. Provide a list of references (including references for subcontractors) and their contact information.

G. Cost Proposal

For evaluation purposes, provide a full description and breakdown of the expected expenditures of funds for each task contained in *Appendix A, Scope of Work*, consistent with the preliminary work, staffing and project management submitted under Section IV, E above. The budget should include a breakdown of hours, labor rates and expenses by task and deliverable for the project. It should identify or refer to key personnel or job descriptions in relation to each task to provide a full explanation of the resources committed to the project.

H. California Levine Act Statement

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

I. Insurance Provisions Document

Submit a signed Insurance Provisions Document (*Appendix C-1*).

J. Federal Requirements

As this project is funded with Federal Highway Administration (FHWA) Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds, the resulting contract will be subject to the federally required provisions included in *Appendix D - Department of Transportation Requirements*, submit completed federal-required certifications related to lobbying, and debarment, and subcontractor information (*Appendices D-1, and D-2*).

K. State Requirements

As this project is funded with Federal Highway Administration (FHWA) Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds subject to a Master Agreement with the California Department of Transportation, the resulting contract will be subject to state

requirements under the Fair Employment Practices and Nondiscrimination Assurances provisions included in *Appendix E*.

V. PROPOSAL EVALUTION

A. Verification of Minimum Qualifications

The Project Manager will review proposals to ensure that each proposal meets the minimum qualifications set out in *Section II, Proposer Minimum Qualifications and Requirements* of this RFP. Proposers failing to meet the minimum qualifications will not be considered.

B. Review for General Responsiveness

The Project Manager will then conduct an initial review of the proposals for general responsiveness. Any proposal that does not include enough information to permit the evaluators to rate the proposal in any one of the evaluation factors listed below will be considered non-responsive. A proposal that fails to include one or more items requested in *Section IV, Proposal Form*, may be considered complete and generally responsive, if evaluation in every criterion is possible.

C. Evaluation Criteria

Responsive proposals will then be evaluated by a panel of MTC and transit operator staff on the basis of the following evaluation factors, in order of relative importance:

1. Individual and team expertise and experience providing services that demonstrate the proposer possesses the qualifications needed to successfully carry out the project, as described in *Section II, Proposer Minimum Qualifications and Requirements*.
2. Approach to completing the project.
3. Cost effectiveness, including hours and appropriateness of personnel assigned to each task; extent and sufficiency of commitment of key personnel; approach to and cost efficiency of required travel for non-local personnel; hourly rates; reasonableness of task budget.
4. Communication skills based on proposal and interview, if held.

D. Proposer Interview

Following the initial evaluation, the panel may elect to recommend award to a particular proposer (with or without interviews), or interview a “short list” of proposers, consisting of those proposers reasonably likely, in the opinion of the panel, to be awarded the contract.

VI. GENERAL CONDITIONS

A. Limitations

This RFP does not commit MTC to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFP.

B. Award

All finalists may be required to participate in negotiations and to submit such price, technical, or other revisions of their proposals as may result from negotiations. MTC also reserves the right to award the contract without interviews, based upon the initial proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint. Any award made will be to the Consultant whose proposal is most advantageous to MTC based on the evaluation criteria outlined above.

C. Binding Offer

A signed proposal submitted to MTC in response to this RFP shall constitute a binding offer from Consultant to contract with MTC according to the terms of the proposal for a period of ninety (90) days after its date of submission, which shall be the date proposals are due to MTC.

D. Contract Arrangements

A synopsis of MTC's contract provisions is enclosed for your reference as *Appendix C*. Proposers may request a complete example of MTC's professional services contract document. 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 listed above. If no such change is requested, the Consultant will be deemed to accept MTC's standard contract provisions.

The selected Consultant will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix C, Insurance Requirements*. Consultant agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements in *Appendix C* within ten (10) days of MTC's notice that it is the successful proposer. Requests to change MTC's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions listed above. 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 must be brought to MTC's attention no later than the date for protesting RFP provisions listed above. If such objections are not brought to MTC's attention consistent with the protest provisions of this RFP, compliance with all material insurance requirements will be assumed.

The resulting contract will be funded in part with federal funds. Federally required contract provisions are included in *Appendix D*. State requirements are included at *Appendix E*.

E. Contractor Payment Provisions

Payment will be fixed-price lump sum based on deliverables.

F. Selection Disputes

A proposer may object to a provision of this RFP on the grounds that it is unduly restrictive, arbitrary or biased, or to the selection of a particular Consultant on the grounds that MTC procedures, the provisions of this RFP 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:

- No later than one (1) week prior to the date proposals are due, for objections to the RFP's provisions; or
- Within three (3) working days after the date on which the contract award is authorized or the date the proposer is notified that it was not selected, whichever is later, for objections to the Consultant(s) selection.

Protests must clearly and specifically describe the basis for the protest in sufficient detail for the MTC review officer to recommend a resolution. The evaluation record shall remain confidential until the MTC Executive Director authorizes award.

The MTC Section Director responsible for the procurement will respond to the protest in writing, based on the recommendation of a staff review officer. Should the protesting Proposer wish to appeal the decision of the MTC Section Director it may file a written appeal with the MTC Executive Director no less than three (3) working days after receipt of the written response from the Section Director. The Executive Director's decision will be the final agency decision.

Authorization to award a contract to a particular Consultant 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 Section Director, or by the Executive Director, should the MTC Section Director's resolution of the initial protest be appealed.

G. Public Records

This RFP and any material submitted by a proposer in response to this RFP are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt by law. Proposals will remain confidential until the Administration Committee has authorized award.

H. Organizational Conflicts of Interest

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. 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 Consultant, and if so, whether any potential bias can be mitigated acceptably by MTC and the Consultant.

Proposer shall not engage the services of any subcontractor or independent contractor on any work related to this Agreement 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 Agreement.

I. Disadvantaged Business Enterprise (DBE) Requirement

Effective June 2, 2009, 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.

MTC has established an Underutilized Disadvantaged Business Enterprise (UDBE) goal for any contract entered into as a result of this RFP. Proposers must document their activities in the solicitation and selection of subconsultants on *Appendices D-3, D-4, and D-5*, the Local Agency Bidder/Proposer UDBE Information (Consultant Contracts), Local Agency Bidder/Proposer DBE Information (Consultant Contracts), and UDBE Information-Good Faith Efforts respectively. A report on the Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts must be included with all invoices. MTC may withhold payment pending receipt of such report. For the complete DBE participation provisions applicable to this procurement, see *Appendix D*.

Appendices D-3, D-4, and D-5 are Caltrans-required forms. Proposers ***must*** complete *Appendices D-3, D-4 and D-5* according to the instructions in their entirety. This applies even if a proposer is a UDBE/DBE.

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 “Underutilized Disadvantaged Business Enterprise” or “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
- The term “proposer” refers to firms submitting proposals in response to this RFP.

- The term “Contract.” also means Agreement.
- 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”). Consultant 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 UDBE AND DBE INFORMATION

If there is a UDBE goal on the contract, a “Local Agency Proposer-UDBE (Consultant Contract) Commitment” (Exhibit 10-O(1)) form shall be included in the Request for Proposal. 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. Only UDBE participation will be counted towards the contract goal; however, all DBE participation shall be collected and reported.

A “Local Agency Proposer DBE (Consultant Contract)-Information” (Exhibit 10-O(2)) form shall be included with the Request for Proposal. The purpose of the form is to collect data required under 49 CFR 26. For contracts with UDBE goals, this form collects DBE participation by DBEs owned by Hispanic American and Subcontinent Asian Americans. For contracts with no goals, this form collects information on all DBEs, including UDBEs. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

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 UDBE proposer, not submitting 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 UDBE and will meet the goal by performing work with its own forces.
 2. The proposer will meet the goal through work performed by UDBE subcontractors, suppliers or trucking companies.
 3. The proposer, prior to bidding, 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 prime contractor shall list only one subcontractor for each portion of work as defined in its proposal and all DBE subcontractors should be listed in the 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. Proposer may call (916) 440-0539 for web or download assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.
- Click on the link in the left menu titled Find a Certified Firm
 - Click on Query Form link, located in the first sentence
 - Click on Certified DBE's (UCP) located on the first line in the center of the page
 - Click on Click To Access DBE Query Form
 - Searches can be performed by one or more criteria
 - Follow instructions on the screen
 - “Start Search,” “Civil Rights Home,” and “Caltrans Home” links are located at the bottom of the query form

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 on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES 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, count one hundred 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 sixty 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 UDBE 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.

APPENDIX A - SCOPE OF WORK

MTC, BAAQMD and The EV Strategic Council seek a Consultant to develop an electric vehicles promotional campaign aimed at building awareness, action and demand for plug-in electric (PEV) and plug-in hybrid electric vehicles (PHEV) in the Bay Area. Increasing the number of PEVs and PHEVs will result in millions of gallons in fuel savings annually, stimulate the local economy, create jobs, reduce greenhouse gas emissions and improve public health.

The goals of the Campaign include:

- Education of Bay Area residents about electric vehicles, including vehicle operation, differentiation between vehicle types and vehicle charging (e.g., charging station locations, charge times, miles per charge, etc.);
- Behavior change of Bay Area drivers to purchase plug-in electric vehicles (PEV) and plug-in hybrid electric vehicles (PHEV), or use PEV or PHEV when offered the choice;
- Development of core messages that create awareness of the benefits of the use of electric vehicles (e.g., cost savings, convenience, regional economic and job benefits, environmental and health benefits, “fun to drive” and “cool factor”);
- Continuation of the promotion of the Bay Area identity as a center for high tech and green culture;
- Identification of prominent individuals/organizations to deliver campaign messages, including civic and business leaders, EV-related companies, auto companies, cities (e.g., San Francisco and San Jose), regional public agencies, environmental groups and prominent EV drivers (e.g., George Schultz, Gavin Newsom, etc.); and
- Motivate individuals to reduce their contribution to Bay Area GHG emissions.

The Consultant shall develop a campaign strategy over the next four to six months, establishing the activities that will be used for the promotional campaign and result in the scope and schedule for implementation.

The services to be performed by the selected Consultant or Consultant team shall consist of the following:

Electric Vehicle Promotional Campaign Strategy

Working with MTC, Bay Area Air Quality Management District (BAAQMD) and The EV Strategic Council, the Consultant or Consultant team shall develop a strategy for the electric vehicle promotional campaign.

The Consultant shall develop the overall strategy to include the following elements:

- Campaign plan, including a description of the program goals, expected behavioral changes and campaign activities;
- Summary of all planned or existing Bay Area electric vehicle promotional campaigns, and a strategy for how to manage any competing electric vehicle campaigns in order to ensure a consistent message;

- Branding recommendations, including development of a strategy for the brand and promotion of the brand, development of brand guidelines, language and graphic treatments to promote the brand;
- Marketing and promotion plan, including behavior change goals, communications and messaging strategies, marketing tactics, promotions and public outreach strategies, including region-wide and local events;
- Partnership and resource leveraging, including partnerships with various public and private organizations, including car associations and individuals to join in the outreach efforts;
- Market research, including review of existing research, web surveys, focus groups and literature reviews in order to identify and understand target audience; and
- Program goals and evaluation plan, including how the campaign will be evaluated to determine its impact on PEV and PHEV perceptions and use.

Work shall include the creation of a project schedule, which will outline steps and stages necessary in order to successfully complete tasks.

Deliverable 1a: Deliverables Schedule and Work Plan
Deliverable 1b: Draft Campaign Plan
Deliverable 1c: Final Campaign Plan

**APPENDIX B - 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:

Tom Azumbrado
Tom Bates
Dave Cortese
Dean J. Chu
Chris Daly
Bill Dodd

Dorene M. Giacobini
Federal D. Glover
Scott Haggerty
Anne W. Halsted
Steve Kinsey
Sue Lempert
Jake Mackenzie

Jon Rubin
Bijan Sartipi
James P. Spering
Adrienne J. Tissier
Amy Rein Worth
Ken Yeager

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 C - SYNOPSIS OF
PROVISIONS IN MTC'S
STANDARD CONSULTANT
AGREEMENT**

The selected consultant ("Consultant") will be required to sign MTC's standard consultant agreement, a copy of which standard agreement may be obtained from the Project Manager for this RFP. In order to provide proposers with an understanding of some of MTC's standard contract provisions, the following is a synopsis of the major requirements in our standard agreement for professional services. **THE ACTUAL LANGUAGE OF THE STANDARD CONSULTANT AGREEMENT SUPERSEDES THIS SYNOPSIS.**

Termination: MTC may, at any time, terminate the Agreement upon written notice to Consultant. Upon termination, MTC will reimburse the Consultant for its costs for incomplete deliverables up to the date of termination. Upon payment, MTC will be under no further obligation to the Consultant. If the Consultant fails to perform as specified in the agreement, MTC may terminate the agreement for default by written notice following a period of cure, and the Consultant is then entitled only to compensation for costs incurred for work products acceptable to MTC, less the costs to MTC of rebidding.

Insurance Requirement: See *Appendix C, Insurance Requirements*, attached hereto.

Independent Contractor: Consultant is an independent contractor and has no authority to contract or enter into any other agreement in the name of MTC. Consultant shall be fully responsible for all matters relating to payment of its employees including compliance with taxes.

Indemnification: Consultant agrees to defend, indemnify and hold MTC, FHWA, Caltrans, and their directors, commissioners, officers, representatives, agents and employees harmless from all claims, damages, liability, and expenses resulting from any negligent or otherwise wrongful act or omission of Consultant in connection with the agreement. Consultant agrees to defend any and all claims, lawsuits or other legal proceedings brought against MTC arising out of such negligent or wrongful acts or omissions. The Consultant shall pay the full cost of the defense and any resulting judgments.

Data 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 the Consultant by MTC for use by the 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 the Consultant's use or possession of such MTC Data. Any updates, revisions, additions or enhancements to such MTC Data made by the Consultant in the context of the Project shall be the property of MTC.

Ownership of Work Product: All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("Work Product") written or produced by the Consultant under this Agreement and provided to MTC as a deliverable shall be the property of MTC. Consultant will be required to assign all rights in copyright to such Work Product to MTC.

Personnel and Level of Effort: Personnel assigned to this Project and the estimated number of hours to be supplied by each will be specified in an attachment to the Agreement. No substitution of personnel or substantial decrease of hours will be allowed without prior written approval of MTC.

Subcontracts: No subcontracting of any or all of the services to be provided by Consultant shall be allowed without prior written approval of MTC. MTC is under no obligation to any subcontractors.

Consultant's Records: Consultant shall keep complete and accurate books, records, accounts and any and all work products, materials, and other data relevant to its performance under this Agreement. All such records shall be available to MTC for inspection and auditing purposes. The records shall be retained by Consultant for a period of not less than four (4) years following the fiscal year of the last expenditure under this Agreement.

Prohibited Interest: No member, officer or employee of MTC can have any interest in this agreement or its proceeds and Consultant may not have any interest which conflicts with its performance under this Agreement.

Governing Law. The Agreement shall be governed by the laws of the State of California.

**APPENDIX C-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 this Agreement, placed with insurers with a Best's rating of A-X or better.

Yes (√)	Please certify by checking the boxes at left that required coverages will be provided within ten (10) days of MTC's notice to firm that it is the successful proposer.
—	<u>Workers' Compensation Insurance</u> 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.
—	<u>Commercial General Liability Insurance</u> 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, BAAQMD and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance as afforded by this endorsement shall be primary as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.
—	<u>Business Automobile Insurance</u> 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.
—	<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.
—	<u>Errors and Omissions Professional Liability Insurance</u> (if applicable) in an amount no less than \$2,000,000. 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 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.

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.

Deductibles: Any deductibles or self-insurance retentions over \$100,000 are subject to the approval of MTC.

Notice of Termination: CONSULTANT shall give written notice to MTC within no more than 10 days of any cancellation, non-renewal or material change of coverage in the policy or policies to MTC and any other additional insured.

Additional Provisions: Each policy or policies of insurance described in Commercial General Liability Insurance, above shall contain the following provisions:

- Inclusion of MTC, BAAQMD, their commissioners, officers, representatives, agents and employees, as additional insured's with respect to work or operations in connection with this Agreement.
- Endorsement providing that such insurance is primary insurance and no insurance of MTC or BAAQMD will be called on to contribute to a loss.

Certificates of Insurance: Promptly on execution of this Agreement and 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 required under the Agreement prior to the Effective Date of the Agreement.

Disclaimer: The foregoing requirements as to the types of 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 contractual indemnification.

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

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) days of MTC's notice to firm that it is the successful proposer.

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 the date for protesting RFP provisions. If such objections are not brought to MTC’s attention consistent with the protest provisions of this RFP, compliance with the insurance requirements will be assumed.

**APPENDIX D - DEPARTMENT
OF TRANSPORTATION
REQUIREMENTS**

1. Equal Employment Opportunity. Consultant shall not, on the grounds of race, color, sex, age, religion, national origin, ancestry, physical handicap, medical condition, or marital status either discriminate or permit discrimination against any employee or applicant for employment in any manner prohibited by Federal, State or local laws. In the event of Consultant non-compliance, MTC may cancel, terminate or suspend the Agreement in whole or in part. Consultant may also be declared ineligible for further contracts with MTC.

Consultant and its subcontractors shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. 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 and its subcontractors shall post in conspicuous places, available to all employees and applicants for employment, a notice setting forth these provisions.

2. Disadvantaged Business Enterprise (DBE) and Small Business Enterprise Policy.
 - A. 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.
 - B. If the contract has an under-utilized DBE (UDBE) goal, the Consultant must meet the UDBE goal by using UDBEs as subcontractor or document a good faith effort to meet the goal. If a UDBE subcontractor is unable to perform, the Consultant must make a good faith effort to replace him/her with another UDBE subcontractor if 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:
 1. Black American
 2. Asian-Pacific American
 3. Native American
 4. Women
 - C. DBE 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 subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the 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.

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

2.1 Prompt Payment of Funds Withheld to Subcontractors

MTC shall hold retainage from the prime Consultant and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime Consultant based on these acceptances. The prime Consultant, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal 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 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 Consultant or subcontractor in the event of a dispute involving late payment or nonpayment by the prime Consultant, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime Consultants and subcontractors.

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

2.2 DBE Records

- A. The 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. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors," CEM-2402F (Exhibit 17-F in Chapter 17 of the LAP), certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to the Contract 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 the Consultant when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors" is submitted to the Contract Manager.
 - 1) Prior to the fifteenth of each month, the Consultant shall submit documentation to the MTC's Project Manager showing the amount paid to DBE trucking companies. The Consultant shall also obtain and submit documentation to the Agency's Contract 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, the

Consultant may count only the fee or commission the DBE receives as a result of the lease arrangement.

2) The Consultant shall also submit to the 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 the Consultant by the Agency's Contract Manager.

2.3 DBE Certification and De-certification Status

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

2.4 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.

2.5 Performance of DBE Consultants 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.
3. Title VI of Civil Rights Act of 1964. Consultant agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and its implementing regulations in 49 CFR Part 21.
 4. Debarment. In contracts over \$25,000, Consultant is required to certify, prior to executing a contract, that neither it nor its principals have been debarred from certain federal transactions by any Federal agency and to require any subcontractors with subcontracts over \$25,000 to provide a similar certification. (A copy of the required certification is included with this *Appendix D*.)
 5. Audit and Inspection of Records. Consultant shall permit the authorized representatives of DOT, Federal Transit Administration (FTA) or the Federal Highway Administration (FHWA, and the Comptroller General of the United States to inspect and audit all data and records of the Consultant relating to its performance under this Agreement from the date of this Agreement until three (3) years after the close out of the federal grant from which this Agreement is financed, or four (4) years after the fiscal year of the expenditure, whichever is longer. This requirement must be passed along to subcontractors, excluding purchase orders not exceeding \$25,000.
 6. Subcontractors
 - A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the MTC and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the 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 the Consultant. The Consultant's obligation to pay its subcontractors is an independent obligation from the MTC's obligation to make payments to the Consultant.

- B. 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.
 - C. Consultant shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Consultant by the MTC.
 - D. Any substitution of subcontractors must be approved in writing by the MTC's Project Manager in advance of assigning work to a substitute subcontractor.
7. Federal Grant Requirements. Those laws, statutes, ordinances, rules, regulations and procedural requirements which are imposed on MTC as a recipient of federal funds are imposed on Consultant, including compliance with 49 CFR Part 18, FTA Circular 4220.1D and the current FTA Master Agreement, a copy of which is available through MTC.
8. Identification of Documents. All reports and other documents completed as part of this Agreement shall carry the following notation on the front cover or title page:
- The preparation of this report has been financed in part by grants from the Federal Transit Administration, U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation.
9. Rights in Data. The Federal Government reserves a royalty-free, nonexclusive, 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.
10. 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 *et seq.*).
11. Clean Air and Water Pollution Act. 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).
12. Restrictions on Lobbying. In agreements over \$100,000, Consultant is required to execute a certificate indicating that no federal funds will be used to lobby federal officials and to disclose lobbying activities financed with non-federal funds. (Certificate attached.)

**APPENDIX D-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 bid or proposal, 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 proposal 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 proposal 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 Non-procurement 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 bid or proposal, 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 proposal.

Date

(Signature of authorized official)

(Type/print name and title)

**APPENDIX D-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 sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients 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 _____, 2012.

By _____
(signature of authorized official)

(title of authorized official)

**INSTRUCTIONS - LOCAL AGENCY PROPOSER- UDBE COMMITMENT
(CONSULTANT CONTRACTS) (Revised 03/09)
ALL PROPOSERS:**

PLEASE NOTE: It is the proposer's responsibility to verify that the UDBE(s) falls into one of the following groups in order to count towards the UDBE 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 UDBE commitment will be grounds for finding the proposal nonresponsive

UDBE 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 UDBEs. The UDBE 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 UDBEs to perform the work (must be certified on the date proposals are received and include UDBE address and phone number). Enter the UDBE prime consultant and subconsultant certification numbers. Prime consultants shall indicate all work to be performed by UDBEs including, if the prime consultant is a UDBE, work performed by its own forces.

There is a column for the total UDBE percentage. Enter the Total Claimed UDBE 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 UDBE, describe exact portion of time to be performed or furnished by the UDBE.) See Notice to Bidders/Proposers Disadvantaged Business Enterprise Information to determine how to count the participation of UDBE 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.

**APPENDIX D-4 - EXHIBIT 10-O2
LOCAL AGENCY PROPOSER
DBE INFORMATION
(CONSULTANT CONTRACTS)**

NOTE: PLEASE REFER TO INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM

AGENCY: _____ MTC _____ LOCATION: _____ 101 – 8th Street, Oakland, CA 94607-4700 _____
 PROJECT DESCRIPTION: _____ Climate Initiatives Program School and Youth Outreach RFP
 TOTAL CONTRACT AMOUNT: \$ _____
 PROPOSAL DATE: _____
 PROPOSER'S NAME: _____

CONTRACT ITEM NO.	DESCRIPTION OR SERVICES TO BE SUBCONTRACTED	DBE Cert. No. AND EXPIRATION DATE	NAME OF DBEs (Must be certified on the date bids are opened - include DBE address and phone number)	PERCENTAGE OF DBE
N/A				

For Local Agency to Complete:

Local Agency Contract Number: _____
 Federal Aid Project Number: _____
 Federal Share: _____
 Contract Award Date: _____

Local Agency certifies that the DBE certification(s) has been verified and all information is complete and accurate.

 Print Name Signature Date
 Local Agency Representative
 (Area Code) Telephone Number: _____

Total Claimed Participation \$ _____
 _____ %

 Signature of Proposer

 Date (Area Code) Tel. No.

For Caltrans Review:

 Print Name Signature Date
 Caltrans District Local Assistance Engineer

 Person to Contact (Please Type or Print)

Local Agency Proposer - DBE Commitment(Rev 3/09)

Distribution: (1) Copy – Fax or scan a copy to the Caltrans District Local Assistance Engineer (DLAE) within 15 days of contract execution. Failure to send a copy to the DLAE within 15 days of contract execution may result in de-obligation of funds for this project.
 (2) Original – Local agency files

**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 Bidders/Proposers 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.

**APPENDIX D-5 - UDBE
INFORMATION—GOOD FAITH
EFFORTS**

Federal-aid Project No. _____ Bid Opening Date _____

MTC has established an Underutilized Disadvantaged Business Enterprise (UDBE) goal of 1.2% for this contract. The information provided herein shows that a good faith effort was made.

Proposers shall submit the following information to document adequate good faith efforts. Proposers should submit the following information even if the “Local Agency Bidder/Proposer – UDBE Commitment” form indicates that the proposer has met the UDBE goal. This will protect the proposer’s eligibility for award of the contract if the administering agency determines that the proposer failed to meet the goal for various reasons, e.g., a UDBE firm was not certified at bid opening, or the proposer made a mathematical error.

Submittal of only the “Local Agency Bidder/Proposer – UDBE 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 UDBE Commitment” of the Special Provisions:

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

Publications	Dates of Advertisement

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

Names of UDBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates

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

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

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

Names, addresses and phone numbers of rejected UDBEs and the reasons for the proposer's rejection of the UDBEs:

- E. Efforts made to assist interested UDBEs 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 UDBEs:

F. Efforts made to assist interested UDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the UDBE 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 UDBE 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

H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

Name of Proposing Company	
Signature of Authorizing Official	
Date	

**APPENDIX E - STATE
REQUIRED CLAUSES,
ATTACHMENTS E-1 AND E-2**

ATTACHMENT E-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 E-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 proposers 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 non discrimination 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 E-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 E-2

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

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that 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 the 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 E-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 E-2

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

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

That in the event of breach of any of the above nondiscrimination covenants, 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 E-2

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

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

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

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

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

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

That in the event of breach of any of the above nondiscrimination covenants, 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.