



METROPOLITAN  
TRANSPORTATION  
COMMISSION

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*Adrienne J. Tissier, Chair*  
San Mateo County

August 23, 2012

*Amy Rein Worth, Vice Chair*  
Cities of Contra Costa County

## REQUEST FOR QUALIFICATIONS Pavement Management Technical Assistance Program (P-TAP)

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

*Tom Bates*  
Cities of Alameda County

Dear Consultant:

*David Campos*  
City and County of San Francisco

The Metropolitan Transportation Commission (MTC) invites your firm to submit a Statement of Qualifications (SOQ) to provide technical assistance to Bay Area jurisdictions through the Pavement Management Technical Assistance Program (P-TAP). Selected consultants will be expected to provide technical assistance in implementing and maintaining a pavement management system and performing associated tasks aimed at improving the pavement management practices for Bay Area jurisdictions. This procurement initiates Round 14 of P-TAP.

*Dave Cortese*  
Santa Clara County

*Bill Dodd*  
Napa County and Cities

*Dorene M. Giacopini*  
U.S. Department of Transportation

*Federal D. Glover*  
Contra Costa County

This letter, together with its enclosures, comprises the RFQ for this project. Responses to the RFQ should be submitted in accordance with the instructions set forth in this RFQ.

*Mark Green*  
Association of Bay Area Governments

*Scott Haggerty*  
Alameda County

*Anne W. Halsted*  
San Francisco Bay Conservation  
and Development Commission

Any addenda to this RFQ that may be issued by MTC will be posted at <http://procurements.mtc.ca.gov/>; it is the proposer's responsibility to check for addenda to this RFQ and comply with new or revised requirements that may be stated therein.

*Steve Kinsey*  
Marin County and Cities

*Sam Liccardo*  
Cities of Santa Clara County

### **I. Statement of Qualifications Due Date**

Interested firms must submit an original and five (5) hard copies of their SOQs by 4:00 p.m., **Friday, October 5, 2012**. *SOQs received after that date and time will not be considered.* A submitted SOQ shall be considered a firm offer to enter into a contract for a period of one hundred and eighty (180) days from the date of submittal.

*Jake Mackenzie*  
Sonoma County and Cities

*Kevin Mullin*  
Cities of San Mateo County

*Bijan Sartipi*  
State Business, Transportation  
and Housing Agency

Requests for clarification or exception to RFQ provisions must be received no later than 4:00 p.m., Friday, September 14, 2012.

*James P. Spering*  
Solano County and Cities

### **II. MTC Contact**

SOQs and all inquiries relating to this RFQ should be submitted to the Project Manager at the address shown below. For inquiries, call 510.817.5735 or e-mail [aburch@mtc.ca.gov](mailto:aburch@mtc.ca.gov).

*Scott Wiener*  
San Francisco Mayor's Appointee

*Steve Heminger*  
Executive Director

*Ann Flemer*  
Deputy Executive Director, Policy

*Andrew B. Fremier*  
Deputy Executive Director, Operations

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

### **III. Proposers' Conference**

A proposers' conference will be held on Tuesday, September 11, 2012, at 1 p.m. in the Joseph P. Bort MetroCenter Building, 101 – 8<sup>th</sup> Street, Oakland, CA, in Room 171.

### **IV. Background**

MTC is the transportation planning, financing, and coordinating agency for the nine-county San Francisco Bay Area. In 1985, MTC developed a pavement management software system to allow jurisdictions to track and assess pavement condition, establish optimum repair programs, allocate existing funds cost-effectively along with identifying the impact of various budget scenarios on pavement condition. Currently, all cities and counties in the Bay Area utilize MTC StreetSaver<sup>®</sup> software to manage their pavements.

Established in 1999, P-TAP provides consultant services to help local jurisdictions better manage and maintain their streets and roads using a PMS. P-TAP's initial objective was to assist small to medium-sized jurisdictions, since many of those jurisdictions were not able to implement and maintain a PMS because of limited financial resources, staff inexperience due to turnover along with the lack of staff time necessary to start up the program. The early P-TAP funding rounds effectively addressed those needs and for subsequent funding rounds, eligibility was expanded to include larger cities and counties to assist these jurisdictions with specific components of their PMS.

Currently, all Bay Area jurisdictions use MTC StreetSaver<sup>®</sup> pavement management program. Therefore, the focus of P-TAP Round 14 (P-TAP 14) and later rounds will shift to maintaining the existing databases while still providing each jurisdiction's decision-makers with information that allows them to advocate for increased funds for pavement maintenance, if funding gaps exist. Additionally, MTC expanded P-TAP to meet the desires of cities and counties to gain additional help in related local streets and roads maintenance areas such as engineering design for pavement rehabilitation projects.

MTC intends to enter into one year contracts with two or more consultants selected through this RFQ, with the potential, at MTC's discretion, for up to three (3) one -year extensions. Interested consultants may submit SOQs in response to any or all of the three types of projects outlined within the scope of work (*see Appendix A*). The types of projects include: performing pavement inspections and database updates for Pavement Management Systems (PMS), roadway design projects by preparing Plans, Specifications & Estimates (PS&E), and Asset Management Data Collection. In the past, PMS projects have made up the majority of all awarded projects (e.g., approximately 95 percent of all projects have been PMS); while about 5 percent have been awarded for PS&E. Only two Asset Management projects have been awarded to date.

P-TAP will be directed toward the 109 Bay Area jurisdictions and other public agencies within the region in charge of maintaining streets and roads. Jurisdictions are matched with consultants based the project's scope of work and on a firm's area of expertise. The contract between MTC and each P-TAP consultant will not commit MTC to awarding any particular project or number of projects to the selected consultant. The number of projects assigned to each P-TAP consultant will vary, at the discretion of the MTC Project Manager. The contracts with the selected consultants will include the federally required third party contract provisions described in *Appendices D and E*.

## **V. Minimum Consultant Qualifications**

SOQs must demonstrate that a consultant meets the following minimum consultant qualifications to be eligible for consideration for the three Program tasks described more fully in *Appendix A, Scope of Work*:

### **Task 3.1: Pavement Management Systems (PMS) Projects:**

To be considered for this task, consultants must have a minimum of one (1) year experience related to fully implementing and/or performing maintenance updates for StreetSaver<sup>®</sup> pavement management system or equivalent for at least five (5) cities or counties. This includes all of the following: conducting pavement distress surveys, auditing existing pavement inventory for accuracy and consistency, breaking the street network into management sections, establishing jurisdiction's pavement needs, determining the impacts of budget levels on overall network pavement condition and maintenance backlogs, and identifying projects to be selected under different budget and target-driven scenarios. Since all Bay Area jurisdictions use StreetSaver<sup>®</sup>, all consultants that are selected must be licensed to use StreetSaver<sup>®</sup> Online prior to beginning work.

### **Task 3.2: Roadway Design Projects – Plans, Specifications & Estimates (PS&E):**

To be considered for this task, consultants must be familiar with a PMS (MTC StreetSaver<sup>®</sup> or other) and have a minimum of five (5) years experience in developing technical plans, specifications and estimates for a city or county pavement rehabilitation project. Key personnel must possess valid registration as a Civil Engineer issued by the California State Board of Registration for Professional Engineers.

### **Task 3.3: Non-Pavement Asset Management:**

To be considered for this task, consultants must demonstrate at least one (1) year of asset management experience in inventory and condition assessments for the following assets:

- Storm drains
- Curbs and gutters
- Sidewalks
- Traffic signals
- Street lights
- Signs

This task is contingent upon completion of the new module for the asset management tool in StreetSaver<sup>®</sup>.

## **VI. Scope of Work, Schedule and Budget**

*Appendix A, Scope of Work*, outlines the types of services to be performed by selected consultants. After matching the consultants with the projects, the Project Manager will issue a Task Order for a detailed Workscope, Schedule, and Budget (WSB). Then, the consultant and jurisdiction will agree on a WSB and submit to MTC for approval. WSB's will vary depending on the tasks required to perform the specific project assignments and are expected to clearly describe the scope of work, define the data collection effort needed, time for completion, budget,

and consultant staff assigned for the project tasks. After approval of the WSB by MTC, a task order will be issued for signature by the consultant and finally, by the Section Director.

Once the consultant has completed the work, the consultant will submit to the jurisdiction for review a draft report describing the work completed on the project. For instance, a pavement inspection project would include: a summary of network condition (e.g., PCI, backlog), pavement needs, budget impacts, recommendations, and a summary of management/city council presentations. Any feedback obtained from the jurisdiction should be incorporated into the final report with a copy of the final report and the updated PMS database submitted to the jurisdiction and MTC.

MTC may allow automated, semi-automated, windshield or a combination of hybrid pavement distress survey methods (herein are collectively referred to as “automated surveys”) in P-TAP 14, but only under certain conditions where valid results can be determined. The contract between MTC and each selected P-TAP consultant will not commit MTC to awarding any particular project or number of projects to the selected consultant. Individual projects, with budgets ranging from ten thousand dollars (\$10,000) to one hundred thousand dollars (\$100,000) each, will be awarded based on the jurisdiction size, project scope and number of applicants. Project costs that exceed the cap of one hundred thousand dollars (\$100,000) will be provided directly by local jurisdictions.

MTC is proposing to program up to \$1.45 million in Federal Surface Transportation Program (STP) funds in FY 2012-13. In addition to required federal matching funds, these funds will support P-TAP 14, scheduled to kick off in early March 2013. Selected projects will be assigned to P-TAP consultants no later than January 2013 with the P-TAP 14 projects concluding April 30, 2014. Funding is also expected to be available for the following three years with annual funding of up to \$1.45 million in STP funds.

## **VII. Disadvantaged Business Enterprise (DBE) Requirement**

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

MTC will establish Disadvantaged Business Enterprise (DBE) goals for each task order issued under any contract entered into as a result of this RFQ. Federally required forms related to DBE goals will be required at the time of task order issuance, not at the time of proposal.

### **1. TERMS AS USED IN THIS DOCUMENT**

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

- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

## **2. AUTHORITY AND RESPONSIBILITY**

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

## **3. SUBMISSION OF DBE INFORMATION**

If there is a DBE goal on the contract, a “Local Agency Proposer DBE Commitment (Consultant Contract)” (Exhibit 10-O1) form shall be included in the procurement document. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal, and all DBE participation shall be collected and reported.

A “Local Agency Proposer DBE Information (Consultant Contract)” (Exhibit 10-O2) form shall be included with the procurement document. The purpose of the form is to collect data required under 49 CFR 26. This form collects all DBE participation. 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 DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
  1. The proposer is a DBE and will meet the goal by performing work with its own forces.
  2. The proposer will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.

3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subcontractor for each portion of work as defined in their proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- G. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

## 5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program web site at: <http://www.dot.ca.gov/hq/bep/>.
  - Click on the link in the left menu titled *Disadvantaged Business Enterprise*
  - Click on *Search for a DBE Firm* link
  - Click on *Access to the DBE Query Form* located on the first line in the center of the page
  - Searches can be performed by one or more criteria
  - Follow instructions on the screen
- C. How to Obtain a List of Certified DBEs without Internet Access:

DBE Directory - If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered from the Caltrans Publications Unit at (916) 263-0822, 1900 Royal Oaks Drive, Sacramento, CA 95815-3800.

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

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, 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.

**VIII. Form of Statement of Qualification**

Sections that should be included in each SOQ are described below. Page limits, where specified, are for single-sided print. Proposers are encouraged to print double-sided copies to save paper.

- 1. **A transmittal letter** signed by an official authorized to solicit business and enter into contracts for the firm. The transmittal letter should refer to this RFQ by title and date and should include the name and telephone number of a contact person and a statement that the SOQ is a firm offer to enter into a contract with MTC according to the terms of this RFQ for one hundred and eighty (180) days following its submission. If the firm or a proposed subconsultant is a DBE certified by Caltrans, or a Bay Area transit operator, such certification should be referenced. (*Suggested Page Limit – 2*)
- 2. **A company profile and summary of the firm's qualifications** in relation to the Program, addressing the minimum consultant qualifications listed above for each of the

tasks for which the firm wishes to be considered and other desirable experience and expertise. The company profile should include the firm size and number of local and out-of-region (listed separately) qualified engineers in the firm who would be available to work on projects. (*Suggested Page Limit – 5*)

3. **Descriptions of relevant, recent projects** done by the lead staff person and technical staff proposed for the Program. The description should be limited to one paragraph per project, identify the client, purpose of the project, size of the project, technologies used, years of completion, dollar amount of the contract, and specify who from the project team proposed for the Program worked on the project. (*Suggested Page Limit – 4*)
4. **Summary qualifications** of the lead and technical staff proposed for the Program. Staff qualifications should be limited to one paragraph, and should include the role of the staff person, the length of their work experience, areas of expertise along with their relevant pavement inspection experience. A table showing each proposed staff person and their applicable skills and/or areas of expertise should be provided.
5. **Quality Control Plan.** Firms interested in Task 3.1 must describe their Quality Control Plan (see Section X for more detail), including a list of raters, years of experience in distress data collection and how they were trained. Resumes may be included as an appendix. (*Suggested Page Limit – 2, not including resumes*)
6. **Three references** who can attest to consultant's experience in performing work substantially similar to the services covered by this RFQ, along with contact information and the name of the project or projects done by the consultant for that client. Letters of endorsements may be included as an appendix. There should be at least one reference relating to each task for which the consultant wishes to be considered (*Suggested Page Limit – 1, not including letters of endorsement*)
7. **SUBMIT IN SEPARATE SEALED ENVELOPE. A description of consultant's per-center line mile rates** for all proposed project costs, including statements that the rates include all direct and indirect costs and that the rates are valid for the term of the P-TAP 14, 15, 16 and 17 rounds (four (4) years) of the Program. Per-center line mile rates will be provided in three categories: (1) Less than or equal to 50 miles, (2) More than 50 miles but less than or equal to 150 miles, and (3) More than 150 miles.
8. **A signed California Levine Act statement** (*Appendix C*)
9. **A signed Insurance Provisions document** (*Appendix D-1*)
10. **Federally-required certifications** related to lobbying, debarment (*Appendices E-1, E-2*)\*
11. **A completed Iran Contracting Act of 2010 document** (*Appendix F*)

\*Federally-required forms regarding DBE participation will be required at the time of task order issuance. See *Appendix D*.

#### **IX. Pre-Qualification for Task 3.1**

In addition to meeting the minimum qualifications for Task 3.1, Consultants seeking to perform Task 3.1 activities must also be pre-qualified by MTC prior to evaluation. Pre-Qualification consists of evaluating the practical ability of potential PTAP consultants to conduct pavement distress surveys in accordance with MTC guidelines. This process is designed to ensure that consultants accurately identify the type, severity, and quantity of distresses. Also, the process

confirms that consultants know how to collect and record data in order to enter it into StreetSaver<sup>®</sup> for PCI calculation.

All firms interested in Task 3.1 must be pre-qualified by MTC no later than the date as shown in Section XII, Consultant Selection Timetable. MTC requests that firms send two staff members to perform inspections for the Pre-Qualification. **MTC reserves the right to recover from each firm seeking pre-qualification the administrative costs associated with carrying out that firm's pre-qualification, whether or not the firm is successfully pre-qualified.**

MTC will establish up to 20 test sites based on a range of pavement conditions. Consultants meeting the minimum qualifications for Task 3.1 will inspect the test sites and provide MTC with the data from which MTC can calculate the distress types, distress severities, distress type-severity quantities, and the PCI. The required StreetSaver<sup>®</sup> format is shown in Appendix B-1. MTC will check the results and determine if the consultant meets their stated requirements. The data for the walking survey (manual) method would be collected on test sites that are the full width of the street by 100 feet (or half width by 100 feet if the width of the street is greater than 40 feet). The data for the automated method (as defined in Section 3.1.6.2) would be collected on test sites that are either full width by 100 feet or 12 feet wide (normally in one driving lane) wide by 200 feet or 211.2 feet (some automated firms collected distress in multiples of 0.01 mi (52.8 feet), so they were approximately 211.2 feet long).

The consultants will use their method to complete the survey of the test sites and provide the data in the StreetSaver<sup>®</sup> format that will allow them to calculate the PCI.

The consultants must provide distress data immediately to MTC upon collection in StreetSaver<sup>®</sup> format so that MTC can ensure that the data is not later adjusted. Consultants will not have to include the final totaled values, but they should provide "raw data" in a format that MTC staff can confirm. Consultants are to confer with MTC staff on format.

To pass the pre-qualification process, consultants must meet the following two criteria:

- Distress Data
- 1. At least 50 percent of the PCI values for the inspected sections must be within +/- 5 PCI points of the reference, or "ground truth," PCI values.
- 2. No more than 12 percent of the PCI values for the inspected sections can be greater than +/- 15 PCI points of the reference, or "ground truth," PCI values.

#### **X. Quality Control Plan**

Each qualified firm is responsible for providing quality data to MTC. Each firm will be required to describe in its SOQ the qualifications of each inspector who will collect pavement distress data, including training and experience. If new inspectors will be assigned to collecting pavement distress data, the data collection contractor will need to describe the training and supervision that will be exercised during their "internship" period. The qualifications of the new inspectors must be provided to and approved by MTC before they will be allowed to conduct inspections without the direct supervision of experienced inspectors.

All firms should describe in their SOQ the data verification processes that they will employ to validate accuracy, resolution and precision of the data collected. "Accuracy" indicates that

the distress is identified correctly, e.g., alligator cracking is identified as alligator cracking instead of block cracking. “Resolution” indicates that severity levels are identified accurately, e.g., low severity longitudinal cracking is identified and recorded rather than omitted. “Precision” indicates that repeated inspections produce reasonably similar recorded distress type, severity and density combinations. Data verification processes must include:

1. Periodic re-inspection of “control” sections by inspection teams at least once every two weeks.
2. Re-inspection of at least 5 percent of the sections previously inspected within one month of completing inspections. The same inspection team may do the re-inspections.
3. Re-inspection of at least 5 percent of the inspected sections by a supervisor.
4. Checks of collected data against prior inspection data and checks of calculated PCI values against PCI values based on prior inspection data projected to the inspection date for the same section if no treatments have been applied since the prior inspection. All of those outside plus or minus 15 PCI point differences should be checked by a supervisor or other person approved by MTC.

The Quality Control Plan must define what results will be considered acceptable; at a minimum, results must meet the pre-qualification requirements (see Section IX). The firm must also describe which remedial actions will be taken if the results of the data checks are not acceptable. The Plan must identify when, in what format, and how often the results of the quality control plan checks and corrective actions will be submitted to MTC. The Plan must also identify when the inspection results will be entered into StreetSaver® software, the PCI values calculated, and the results made available to MTC.

Even if a firm has pre-qualified, all of the firm’s inspectors must be certified by MTC through the Inspector Certification Program. In order to be certified, inspectors must inspect the sites used in the pre-qualification tests, or as directed by MTC, and achieve the required level of accuracy performing inspections as defined in Section IX. Certification is valid for two (2) years, and will be renewed upon passage of an inspection test.

## **XI. Evaluation Factors**

The Project Manager, in consultation with the MTC Office of General Counsel, will conduct an initial review of the proposals for adherence to the minimum qualifications and inclusion of the items requested in Form of Proposal above. Proposers failing to meet the minimum qualifications will not be considered. 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 and will not be evaluated. A proposal that fails to include one or more items requested in Form of Proposal may be considered responsive, if evaluation in every criterion is possible. **MTC reserves the right to request additional information from responsive proposers prior to evaluation.**

Only SOQs of qualified firms will be invited to take part in a pre-qualification for Task 3.1 (see Section IX). Firms that are found to be acceptable through the pre-qualifying process for Task 3.1, along with firms that have qualified for Tasks 3.2 and/or 3.3, will be reviewed by an evaluation panel consisting of MTC staff. Firms that do not pass the pre-qualifying process in Task 3.1 but are qualified for either Tasks 3.2 and/or 3.3 will be reviewed together with the rest of the qualified firms based on the following criteria, the first two of which will be weighted at together at 75% and the second two of which will be weighted together at 25%.

- **Qualifications and Experience of the Firm**  
Firm size and depth of resources; firm experience on recent projects relevant to tasks for which firm is being considered with sample reports; if relevant, performance in past P-TAP programs, including completeness of Budget Options Report (BOR), feedback provided by jurisdictions, adherence to deadlines along with the quality of submitted Quarterly Progress Reports (QPR). Previous participation in MTC PMP workshops or trainings will also be considered;
- **Staff Qualifications and Experience**  
Professional experience and qualifications of principals and key staff assigned to the project in implementing the task(s) for which the firm is submitting a proposal. Firm interested in Task 3.1 must submit a list of inspectors, years of experience in distress data collection and how they were trained; and
- **Quality Control Plan**  
Ability to implement a sound quality control plan that includes a process for data verification as described in Section X; and
- **Ability to Adhere to Budget and Schedule**  
Firms must demonstrate through their description of their experience and through references the ability to adhere to projects' schedules and budgets.

The panel members will evaluate the SOQs of firms meeting the minimum qualifications and in the case of Task 3.1, passing the pre-qualification assessment to develop a "short list" of firms to be considered for selection. Oral interviews may be held with short-listed firms, and references may be contacted for any or all of the short-listed firms. References, including past performance on other projects completed by the firm, may be considered in the panel's final evaluation.

The panel recommendations will be forwarded to the MTC Executive Director for approval. If the Executive Director agrees, the recommendations will be considered by MTC's Administration Committee. Staff will ask the Administration Committee to approve a list of firms with whom staff may negotiate for projects.

Firms' per-mile rates will not be a factor in the evaluation. However, MTC, at its sole discretion, reserves the right, after the firms have been ranked, to decline to enter into a contract with a firm whose rates are deemed unreasonable. Rates may be considered in relation to particular projects, based on the budgetary constraints of MTC and participating jurisdictions. Therefore, rates are likely to influence the number of projects for which a P-TAP consultant is selected.

MTC reserves the right to select consultants based solely on Pre-Qualification (Task 3.1 only) and written SOQs and not convene oral interviews. Further, MTC reserves the right to accept or reject any and all SOQs submitted, to waive minor irregularities in SOQs, to negotiate with any and all consultants, and to request additional information from responsive consultants. Any awards made will be to firms whose qualifications are most advantageous to MTC, based on the evaluation criteria outlined above. MTC also reserves the right to fund any or all of the three tasks outlined within the scope of work (*see Appendix A*), as well as eliminate any projects at its sole discretion.

**XII. Consultant Selection Timetable**

September 11, 2012 at 1 p.m.	Proposer's Conference, Joseph P. Bort MetroCenter, 101 8 <sup>th</sup> Street, Oakland, CA, Room 171
September 5 or 6, 2012	Pre-Qualification for Task 1, weather permitting
September 14, 2012 (4 p.m.)	Closing date and time for requests for clarifications/ exceptions
No later than five (5) business days prior to the date SOQs are due	Closing date and time for objections to RFQ provisions
October 5, 2012 (4 p.m.)	Closing date and time for receipt of SOQ at MTC
October 16, 2012	Interviews, if necessary
December 12 <sup>th</sup> , 2012	MTC Administration Committee Review
February 2013	Execution of contracts

**XIII. Selection Disputes**

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

- 1) No later than five (5) working days prior to the date SOQs are due, for objections to RFQ provisions; or
- 2) No later than three (3) working days after the date the proposer is notified that it was found to be non-responsive, failed to meet minimum qualifications, or failed to pass the pre-qualification assessment; or
- 3) No later than three (3) working days after the date on which contract award is authorized or the date the proposer is notified that it was not selected, whichever is later, for objections to consultant selection.

Except with regard to initial determinations of failure to meet the minimum qualifications, the evaluation record shall remain confidential until the MTC Administration Committee authorizes award.

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

The MTC Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Authorization to award a contract to a particular firm

by MTC's Administration Committee 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 Executive Director.

Should the Respondent wish to appeal the decision of the Executive Director, it may file a written appeal with the MTC Administration Committee, no less than three (3) working days after receipt of the written response from the Executive Director. The Administration Committee's decision will be the final agency decision.

#### **XIV. General Conditions**

MTC will not reimburse any firm for costs related to preparing and submitting an SOQ.

Materials submitted by respondents and evaluated by MTC are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*) after the Administration Committee authorizes negotiation of a contract(s).

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

A sample of MTC's standard contract is enclosed for your reference as *Appendix D*. If a consultant wishes to propose a change to any standard MTC contract provision, the provision and the **proposed alternative language must be submitted no later than the date for requesting exceptions to RFQ provisions**. If no such change is requested, the consultant will be deemed to accept MTC's standard contract provisions. In addition, the Program will be funded in part with federal funds. Federally-required contract provisions are included in *Appendix D*, MTC's Standard Professional Service Agreement, Attachment G, Federally Required Clauses and *Appendix E-1* and *E-2*.

The selected consultants will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1*, including professional liability insurance in the amount of \$2,000,000. Each policy or policies shall include MTC and all client jurisdictions as additional insureds and an endorsement providing that such insurance is primary insurance and no insurance of MTC or any client jurisdiction will be called on to contribute to a loss. **Requests to change MTC's insurance requirements must be brought to MTC's attention no later than the date for requesting exceptions to RFQ provisions**. If such objections are not brought to MTC's attention consistent with the protest provisions of this RFQ, compliance with the insurance requirements will be assumed.

The selected consultants will be required to indemnify, defend and hold harmless MTC and all client jurisdictions, as described in *Appendix D*, Indemnification.

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

**XV. Authority to Commit MTC**

Based on the recommendation of the selection panel, the Executive Director of MTC will recommend consultants to the MTC Administration Committee, which will be asked to approve a panel of top-ranked consultants with which staff may negotiate contracts and to the expenditure of funds in connection with this RFQ.

We appreciate your interest in this RFQ and look forward to receiving your statements of qualifications.

Sincerely,



Steve Heminger  
Executive Director

SH: AB

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## APPENDIX A

### SCOPE OF WORK, SCHEDULE, AND BUDGET

The Pavement Management Technical Assistance Program (P-TAP) is intended to allow Bay Area jurisdictions with limited resources to utilize consultant services to implement and/or maintain an effective pavement management system. With all Bay Area jurisdictions currently utilizing the MTC pavement management program, StreetSaver®, it is anticipated that the majority of the projects will involve maintaining, auditing and updating data within StreetSaver®.

#### Scope of Work

##### Program Kick-Off

At the beginning of each round of P-TAP, CONSULTANT will meet with MTC Project Manager and other Program consultants to discuss Program guidelines and standardization of services, deliverable formats, and project administration. This first meeting will occur during the first week of March 2013 (approximately).

1. Project Start-Up
  - 1.1 Project Kick-Off Meeting – CONSULTANT will schedule a meeting with each jurisdiction they are providing services for to kick-off the project; establish communication channels and protocols; discuss the scope of work, schedule, and budget; gather available information; and obtain a thorough understanding of the goals for the project.
  - 1.2 Preparation of Workscope, Schedule, and Budget – The Project Manager will issue a Task Order to the CONSULTANT to prepare a detailed Workscope, Schedule, and Budget (WSB) for review and approval by the jurisdiction and MTC Project Manager. CONSULTANT will finalize the WSB by incorporating any feedback received from the jurisdiction and MTC Project Manager. CONSULTANT must include cost of software purchase and data migration, if jurisdictions have not yet upgraded to StreetSaver® online.

**Deliverable 1: Final Detailed Workscope, Schedule, and Budget**

2. Execute Project
  - 2.1 Once MTC staff receives the completed WSB the Project Manager will issue another Task Order to the CONSULTANT. This Task Order outlines the tasks and deliverables associated with the project and also serves as the “notice to proceed” with the next step of the project. Both the CONSULTANT and MTC Project Manager must sign the Task Order with both parties receiving a copy for their records.

**Deliverable 2: Signed Task Order returned to MTC**

### 3. Perform Project Tasks

- 3.1 **Pavement Management Systems Projects:** A Pavement Management System (PMS) performs diverse functions geared towards helping jurisdictions understand the condition of their pavement and whether current and future revenues will be sufficient to fund the pavement maintenance necessary to ensure streets and roads are at an acceptable level of quality.
- 3.1.1 CONSULTANT will create or update the pavement management system, StreetSaver<sup>®</sup>, currently used by jurisdiction.
- 3.1.2 CONSULTANT will review and audit a database inventory of the jurisdiction's roadway network for accuracy (e.g., GIS/PMS linkage, functional class, surface type, length, width, and number of lanes).
- 3.1.3 CONSULTANT will divide the roadway network into Management Sections, if creating a database for the first time. For maintenance of an existing database CONSULTANT will split or combine, or add new sections as necessary.
- 3.1.4 CONSULTANT will enter Maintenance and Rehabilitation (M&R) History, if available.
- 3.1.5 CONSULTANT will establish or update the decision trees within StreetSaver<sup>®</sup> based on the jurisdictions preferred treatment strategies. All existing and desired treatments and unit costs will be entered.
- 3.1.6 CONSULTANT will perform pavement inspections on the number of centerline miles specifically listed in the Task Order. The exact management sections to be inspected should be determined by the jurisdiction and the CONSULTANT. CONSULTANT will be required to display competency in performing inspection. At the discretion of, and under the direction of MTC, CONSULTANT will be required to demonstrate its ability to perform MTC PMP Distress Survey in a manner consistent with MTC's practices and procedures. CONSULTANT's inspectors will be required to perform inspections under a controlled environment, be rated on consistency and accuracy of such inspections, and must meet all passing standards set by MTC under the Inspector Certification Program. All inspectors employed or contracted by CONSULTANT must be certified by MTC. The certification issued is valid for two (2) years, and will be renewed upon passing an inspection test. CONSULTANT's method of inspection used for the project must be consistent with the method used to demonstrate ability to perform PMP distress surveys.

#### 3.1.6.1 Manual Inspection

MTC maintains that the most appropriate method to determine the Pavement Condition Index (PCI) of management sections of roads and streets included in the MTC PMP is to conduct a walking distress survey. The distress definitions and descriptions are included in the MTC-published "Pavement Condition Index Distress Identification Manual for Asphalt and Surface Treatment Pavements," 3<sup>rd</sup> Edition, April 2012 and the "Pavement Condition Index Distress Identification Manual for Jointed Portland Cement Concrete Pavements," 2<sup>nd</sup> Edition, October 2002. **For network level analysis, MTC**

**recommends that at least 10 percent of the inspection units of each management section be inspected.** The densities of all distress types and severities present are recorded and used to calculate the PCI for each inspection unit inspected. Those PCI values are then used to calculate the section PCI.

#### 3.1.6.2 Automated Inspection

MTC may incorporate pavement inspections within P-TAP that are not exclusively performed by walking. Other methods of distress survey include windshield surveys, automated distress surveys, semi-automated distress surveys, and various hybrid combinations of these (herein are collectively referred to as “automated surveys”) will be considered. Automated surveys will be performed by the CONSULTANT according to the distress definitions and descriptions in the MTC-published “Pavement Condition Index Distress Identification Manual for Asphalt and Surface Treatment Pavements,” 3<sup>rd</sup> Edition, April 2012 and the “Pavement Condition Index Distress Identification Manual for Jointed Portland Cement Concrete Pavements,” 2<sup>nd</sup> Edition, October 2002.

CONSULTANT will use their method to complete the automated survey and provide the inspection data in the format of distress type, severity, and quantity to MTC within a jurisdiction's pavement management database. CONSULTANT may also be subject to further evaluation by a local jurisdiction as per the MTC-published “A User’s Guide for Semi-Automated Pavement Distress Data Collection,” October 2007.

- 3.1.7 CONSULTANT will implement a Quality Control Plan as set forth in Section \_\_\_\_, Quality Control Plan. This Plan is designed to check that the Consultant uses reasonable quality control and manage the data collection process to effectively provide data that meets the MTC. Note: jurisdictions are encouraged to perform their own inspections to review the consultant’s work.
- 3.1.8 CONSULTANT will perform data entry of all distresses found during pavement inspection into StreetSaver<sup>®</sup>. Once completed, CONSULTANT will calculate the PCI.
- 3.1.9 CONSULTANT will perform data entry of all recent maintenance and repair work since last update into StreetSaver<sup>®</sup>. Once completed, CONSULTANT will calculate the PCI.
- 3.1.10 CONSULTANT will estimate available revenues for pavements over the next five years. Past trends should also be determined with an extension of trends over the next five years.
- 3.1.11 CONSULTANT will run at least three budget and/or target-driven scenarios analyses and show impacts through the use of GIS maps in the StreetSaver<sup>®</sup> GIS Toolbox. The three include: Unconstrained Needs distributed evenly over five years, estimated future revenues based on historical data (trends), and the “Break Even” point if trends do not provide the status quo.
- 3.1.12 CONSULTANT will provide recommendations, if shortfalls exist, for how the jurisdiction can employ better preventive maintenance strategies or increase funding by proposing a preferred future budget level.

- 3.1.13 CONSULTANT will deliver a draft updated pavement management database, and Budget Options Report (BOR) containing the above information, to the jurisdiction for their review.
- 3.1.14 Discretionary Subtasks to be assigned by MTC and local jurisdiction (a, b and c).
- a) CONSULTANT will establish full linkage of pavement data to GIS map through the use of StreetSaver® GIS Toolbox, if requested by MTC or the jurisdiction.
  - b) CONSULTANT will provide assistance to City Staff for council presentations, if requested by MTC or the jurisdiction.
  - c) CONSULTANT will provide one-on-one or group MTC PMP training to jurisdictions, if requested by MTC or the jurisdiction.
- 3.2 **Pavement Design Projects – Plans, Specifications & Estimates (PS&E):** Provide assistance to the Client Agency in developing PS&E design work for specific roadway infrastructure maintenance, rehabilitation, and/or reconstruction projects.
- 3.3 **Non-Pavement Asset Management Project:** Provide inventory and condition assessments for signs, storm drain, curb and gutter, sidewalk, traffic signals, and street lights.
- 3.3.1 CONSULTANT will create or update an inventory of the assets used by jurisdiction in the jurisdiction’s PMS database.
- 3.3.2 CONSULTANT will perform needs analyses using remaining life based on expected life or from condition data indicating that work is needed.
- 3.3.3 CONSULTANT will deliver an updated non-pavement assets database, and provide a draft Non-Pavement Needs Assessment Report to the jurisdiction for their review.

Deliverable 3.1:	Draft Budget Options Report, Updated Database to Jurisdiction
Deliverable 3.2:	Draft Copy of Plans, Specifications and Estimates to Jurisdiction
Deliverable 3.3:	Draft Non-Pavement Needs Assessment Report, Updated Database to Jurisdiction

#### 4. Final Report

- 4.1 CONSULTANT will deliver an updated pavement management database, and BOR containing all required information, to both the jurisdiction and MTC.
- 4.2 CONSULTANT will deliver final version of PS&E to both the jurisdiction and MTC.
- 4.3 CONSULTANT will deliver an updated pavement management database containing non-pavement data, and final Non-pavement Needs Assessment Report.

**SCHEDULE**

The expected schedule for the first year (Round 14) is as follows. The final schedule will be applicable across all consultants. Deviations will require prior approval from the MTC Project Manager or designated representative.

Note: The duration for P-TAP 14 will be between 11 and 15 months.

<b>Task</b>		<b>Milestones</b>
	Program Kick-Off	February/March 2013
1.	Project Start-Up	
	Kick-Off Meetings	March 2013 – April 2013
	Prepare Work scope, Schedule, and Budget	March 2013 - June 2013
2.	Execute WSB	Completed shortly after receiving WSB
3.	Perform Project Tasks	Completed approximately Summer 2013
	Pavement Inspections	
	Plans, Specifications and Estimates	
	Non-Pavement Asset Data Collection	
4.	Final Report	To be completed by April 30, 2014

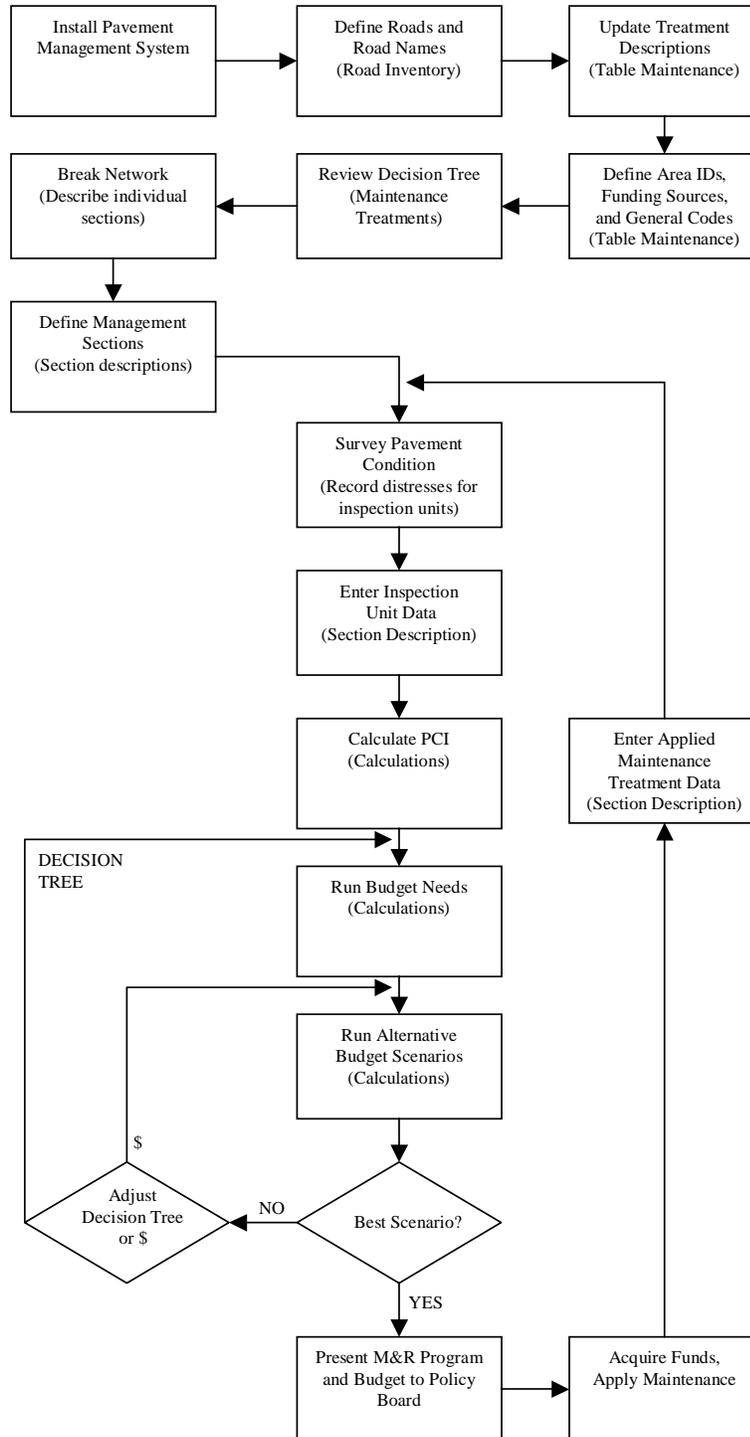
**BUDGET**

MTC will pay CONSULTANT a fixed fee for Tasks 1 through 4 based on the following fee schedule. Fees include all direct and indirect costs. CONSULTANT fees that exceed the MTC grant will be negotiated between the jurisdiction and the CONSULTANT. CONSULTANT must include cost of software purchase and data migration, if jurisdictions have not yet upgraded to StreetSaver® online.

<b>Deliverable</b>	<b>Payment</b>
1. MTC-Submitted Detailed Work scope, Schedule, and Budget	20%
2. Execute Project	0%
3. Perform Project Tasks	60%
4. Final Report	20%

## APPENDIX B

### MTC PAVEMENT MANAGEMENT PROGRAM OVERVIEW



**APPENDIX B-1  
STREETSAYER® SAMPLE INSPECTION IMPORT EXCEL FORMAT**

StreetID	Section ID	Inspection Unit#	Inspection Date	Inspection Area	Inspection Length	Distress Type	Severity	Distress Size	No Distresses	Special
Madison	1	1	7/1/2009	2100	70				Yes	No
Madison	2	1	7/2/2009	2200	75	Block Cracking	M	70	No	No
Madison	2	2	7/2/2009	2250	80	Alligator Cracking	L	20	No	No
Madison	2	2	7/2/2009	2400	70	Distortions	H	12	No	No
Madison	3	1	7/2/2009	2000	65	Alligator Cracking	M	15	No	No
Madison	3	1	7/2/2009	2300	90	Block Cracking	L	23	No	No
Madison	3	1	7/2/2009	2100	85	Distortions	H	16	No	No

**APPENDIX C**  
**CALIFORNIA LEVINE ACT STATEMENT**

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

MTC’s commissioners include:

Tom Azumbrado  
Tom Bates  
David Campos  
Dave Cortese  
Bill Dodd  
Dorene M. Giacomini

Federal D. Glover  
Mark Green  
Scott Haggerty  
Anne W. Halsted  
Steve Kinsey  
Sam Liccardo  
Jake Mackenzie

Kevin Mullin  
Bijan Sartipi  
James P. Spering  
Adrienne J. Tissier  
Amy Rein Worth  
Scott Wiener

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

YES       NO

If yes, please identify the commissioner: \_\_\_\_\_

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

YES       NO

If yes, please identify the commissioner: \_\_\_\_\_

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

\_\_\_\_\_  
DATE

\_\_\_\_\_  
(SIGNATURE OF AUTHORIZED OFFICIAL)

\_\_\_\_\_  
(TYPE OR WRITE APPROPRIATE NAME, TITLE)

\_\_\_\_\_  
(TYPE OR WRITE NAME OF COMPANY)

**APPENDIX D**

**SAMPLE: MTC'S STANDARD PROFESSIONAL SERVICES AGREEMENT**

*Instructions: Red*  
*Choices: Blue or Purple*

PROFESSIONAL SERVICES AGREEMENT

between

METROPOLITAN TRANSPORTATION COMMISSION

and

NAME OF CONSULTANT

for

PAVEMENT MANAGEMENT TECHNICAL ASSISTANCE PROGRAM (P-TAP)

FISCAL YEARS 201\_\_-201\_\_ to 201\_\_-201\_\_

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**PROFESSIONAL SERVICES AGREEMENT**  
**Between METROPOLITAN TRANSPORTATION COMMISSION**  
**And INSERT NAME OF CONSULTANT**  
**For**  
**PAVEMENT MANAGEMENT TECHNICAL ASSISTANCE PROGRAM (P-TAP)**

THIS AGREEMENT is made and entered into as of the **xx** day of **Month**, 2012, by and between the Metropolitan Transportation Commission (herein called "MTC "), a regional transportation planning agency established pursuant to California Government Code § 66500 and **INSERT NAME OF CONSULTANT**, (herein called "CONSULTANT"**"CONTRACTOR"** **MAY BE SUBSTITUTED, IF APPROPRIATE**), a **PICK ONE OF THE FOLLOWING:** partnership, \_\_\_\_\_[state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the state of \_\_\_\_\_.

**RECITALS**

WHEREAS, MTC intends to provide services to Bay Area jurisdictions through a pavement management technical assistance program (herein called "the Project"); and

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

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

WHEREAS, the parties hereto now wish to enter into an agreement (the "Agreement") pursuant to which CONSULTANT will render professional services in connection with the Project as hereinafter provided.

NOW, THEREFORE, the parties hereto agree as follows:

1. **SCOPE OF SERVICES**

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

Order Process, attached hereto and incorporated herein, and should include, at a minimum, a completed form as shown in Attachment A-2, Task Order Form.

In the performance of its services, CONSULTANT represents that it has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services, and CONSULTANT represents that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing. CONSULTANT agrees to perform or secure the performance of all specified services in their entirety with respect to fully executed Task Orders within the Maximum Payment specified in Article 3. Amy Burch (herein called "MTC Project Manager") is responsible for communication with CONSULTANT and the administration of this Agreement. MTC'S Executive Director or designated representative may substitute a new MTC Project Manager by written notice to CONSULTANT.

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

#### 1.1 PROGRESS REPORTS

CONSULTANT shall provide MTC with [**INSERT FOR COST REIMBURSEMENT CONTRACTS OR AS NECESSARY: monthly**] progress reports according to the schedule and form approved by the MTC Project Manager.

#### 2. PERIOD OF PERFORMANCE

CONSULTANT's services hereunder shall commence on or after \_\_\_\_\_, 201\_\_, and shall be completed no later than \_\_\_\_\_, 201\_\_, unless extended by duly executed amendment or earlier terminated, as hereinafter provided. CONSULTANT's services shall be performed in accordance with the schedule included in Attachment B, Project Schedule, attached hereto and incorporated herein by this reference. CONSULTANT's services shall be performed in accordance with the schedule included in each signed Task Order.

#### 3. COMPENSATION AND METHOD OF PAYMENT

Subject to duly executed amendments, MTC will pay CONSULTANT for its services as described in duly executed Task Orders a total amount including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subcontractors costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee not to exceed **SPELL OUT AMOUNT IN WHOLE**

**DOLLARS (\$\_\_\_\_\_)** (“Maximum Payment”). MTC shall make payments to CONSULTANT in accordance with the provisions described in Attachment C, Compensation and Method of Payment, attached hereto and incorporated herein by this reference. A report on the Monthly Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts in the form set forth in ATTACHMENT G-3, attached hereto and incorporated herein, must be included with all invoices. MTC may withhold payment pending receipt of such report.

All invoices shall be made in writing and delivered or mailed to MTC as follows:

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

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

4. KEY PERSONNEL

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

5. AMENDMENTS

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

6. TERMINATION

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

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

CONSULTANT's actual or projected lost profits had the CONSULTANT completed the services required by this Agreement.

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

#### 7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

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

#### 8. INDEPENDENT CONTRACTOR

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

#### 9. INDEMNIFICATION

CONSULTANT agrees to indemnify and hold harmless MTC and those entities (if any) identified as additional insureds in Attachment E, Insurance and Financial Security (Bond) Provisions, and their commissioners, directors, officers, agents, and employees (collectively "MTC Indemnified Parties") from and against any and all claims, demands, actions, causes of action, damages, liability, obligation, costs and expenses (including attorneys' fees and costs) of any kind whatsoever, including (without limitation) those for personal injuries (including, but not limited to death, bodily injuries, emotional or mental distresses and losses of consortium), property damages or pecuniary, financial or economic losses of any kind whatsoever (collectively "Claims and Losses") if the Claims and Losses are caused by CONSULTANT's

breach of obligations under this Agreement, willful misconduct, or negligent services performed under this Agreement. It is understood and agreed that Consultant has no obligation to indemnify and hold the MTC Indemnified Parties harmless if the Claims and Losses are caused by the sole active negligence of the MTC Indemnified Parties.

CONSULTANT further agrees to immediately defend the MTC Indemnified Parties with respect to any Claims and Losses if such Claims and Losses are alleged to arise out of or relate to any allegations of CONSULTANT's breach of obligations under this Agreement, willful misconduct, or negligent services performed under this Agreement. As part of this defense obligation, CONSULTANT agrees to either retain counsel to defend the MTC Indemnified Parties or pay charges of the MTC Indemnified Parties' attorneys with regard to the Claims and Losses. CONSULTANT's duty to defend shall apply and be enforced even if it is alleged that the acts, omissions or failures to act of parties other than CONSULTANT, including the MTC Indemnified Parties, caused or contributed to the Claims and Losses.

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

#### 10. DATA TO BE FURNISHED BY MTC

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

**Use 10.1 if Consultant will be handling or have access to personally identifiable information. If not applicable, delete text and insert "Not Used."**

#### 10.1 PERSONALLY IDENTIFIABLE INFORMATION

CONSULTANT agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment G, [Special Conditions](#)

Regarding Personally Identifiable Information, attached hereto and incorporated herein by this reference.

**USE 10.2 IF MTC WILL BE DISCLOSING CONFIDENTIAL INFORMATION OTHER THAN PII. IF MTC AND CONSULTANT WILL BE MUTUALLY DISCLOSING INFORMATION, REVISE BASED ON INPUT FROM THE OFFICE OF GENERAL COUNSEL.**

**10.2 NONDISCLOSURE OF CONFIDENTIAL INFORMATION**

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

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

## 11. OWNERSHIP OF WORK PRODUCTS

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

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

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

## 12. SUBCONTRACTS

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

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

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

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

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

### 13. ASSIGNMENT OF AGREEMENT

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

### 14. RECORDS

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

### 15. AUDITS

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



## 18. PROHIBITED INTERESTS

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

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

### 18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

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

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

If at any time during the term of this Agreement CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONSULTANT shall immediately provide MTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of

interest. If at any time during the period of performance of this Agreement, MTC becomes aware of an organizational conflict of interest in connection with CONSULTANT's performance of the work hereunder, MTC shall similarly notify CONSULTANT. In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by MTC, MTC will consider the conflict presented and any alternatives proposed and meet with CONSULTANT to determine an appropriate course of action. MTC's determination as to the manner in which to address the conflict shall be final.

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

#### 19. LAWS AND REGULATIONS

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

#### 20. CLAIMS OR DISPUTES

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

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

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

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

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

## 21. REMEDIES FOR BREACH

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

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

## 22. TEMPORARY SUSPENSION OF WORK

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

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

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

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

## 23. WARRANTY OF SERVICES

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

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

1. The right to have CONSULTANT re-perform such services at the CONSULTANT's expense; or
2. The right to have such services done by others and the costs thereof charged to and collected from the CONSULTANT if within 30 days after written notice to CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to the MTC that it has undertaken said re-performance; or
3. The right to terminate the Agreement for default. CONSULTANT shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions.

## 24. DISPUTE RESOLUTION

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

agreement, MTC may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the Project Manager's determination.

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

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

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

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

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

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

25. CHOICE OF LAW

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

26. ATTORNEYS' FEES

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

27. PARTIAL INVALIDITY

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

28. BENEFIT OF AGREEMENT

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

29. NO THIRD PARTY BENEFICIARIES

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

30. ENTIRE AGREEMENT; MODIFICATION

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

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

METROPOLITAN TRANSPORTATION  
COMMISSION

NAME OF CONSULTANT

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Steve Heminger, Executive Director

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Insert Appropriate Name, Title

## **ATTACHMENT A**

### **Scope Of Work**

#### Outline of Services

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

## **ATTACHMENT A-1, TASK ORDER PROCESS**

Detailed Task Order Process:

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

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

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

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

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

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

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

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

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

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

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

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

**ATTACHMENT A-2**  
Task Order Form

1. Task Order No. (include FY)	
2. Title of Task:	
3. MTC or BATA Task Lead (if different from MTC Project Manager):	
4. Description of work:	<i>Summarize key task expectations. For more information, see attached <u>Task Order Budget and Schedule</u> and <u>Detailed Description of Work</u> (attached).</i>
5. Original Maximum Payment:	
6. Amended Maximum Payment:	<i>Include each amendment to maximum payment, by amendment number, for particular fiscal year.</i>
7. Completion Date:	Date Schedule attached.
8. Payment terms:	<i>Check the one that applies (see 11 below for more information):</i>  <input type="checkbox"/> Time and Materials <input type="checkbox"/> Deliverables

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

A. Deliverables-based.

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

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

B. Time and Materials

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

<u>Personnel/Expense</u>	<u>Duties</u>	<u>Rate</u>	<u>Est. Hours</u>	<u>Total Cost</u>
--------------------------	---------------	-------------	-------------------	-------------------

1.			\$		\$1
2.			\$		\$1
3.			\$		\$1
4.			\$		\$1
5.			\$		\$1
<b>Total:</b>					<b>\$5.00</b>

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

METROPOLITAN TRANSPORTATION  
COMMISSION

CONSULTANT

\_\_\_\_\_  
Insert title of section director  
Date: \_\_\_\_\_

\_\_\_\_\_  
Insert name and title of authorized individual  
Date: \_\_\_\_\_

Task Order Schedule

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

Detailed Description of Work

**Task Order #: Title**

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

**ATTACHMENT B**  
**Project Schedule**

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

## ATTACHMENT C

### **Compensation and Method of Payment**

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

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

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

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

For Task Orders authorizing time and materials payment, CONSULTANT shall specify the work performed, hours worked, and amount due (by personnel), authorized expenses (with receipts for such expenses), the total amount claimed under the invoice and the amount paid to date under the Task Order.

**ATTACHMENT D**  
**Key Personnel Assignments**

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

## ATTACHMENT E

### 1. INSURANCE

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

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

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

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

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000

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

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

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

4. Umbrella Insurance in the amount of \$5,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$2,000,000 per claim.

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

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

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

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

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

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

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

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

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

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

H. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant hereto, including, but not limited to, liability assumed pursuant to Article 9 of this Agreement.

2. NOT USED

3. ADDITIONAL INSURED

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

- Metropolitan Transportation Commission (MTC)
- California Department of Transportation (Caltrans)
- Federal Highway Administration (FHWA) (if federal funding is added)
- All client jurisdictions

**ATTACHMENT F**  
**Subconsultant List**

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

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

**ATTACHMENT G**  
**Federally Required Clauses**

1. EQUAL EMPLOYMENT OPPORTUNITY

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

2. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

- A. 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 a DBE goal, the CONSULTANT must meet the DBE goal by committing DBE participation or document a good faith effort to meet the goal. If a DBE subconsultant is unable to perform, the CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The CONSULTANT or subconsultant 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 local agency deems appropriate.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

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

- A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing; and other relevant factors.
- B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

4. Prompt Payment of Funds Withheld to Subcontractors

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

dispute involving late payment or nonpayment by the prime contractor, deficient subconsultant performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime CONSULTANT and subconsultants.

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

#### 5. 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 attached as ATTACHMENT G-4, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), attached hereto and incorporated herein by this reference, certified correct by the CONSULTANT or the CONSULTANT's authorized representative and shall be furnished to the Project Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 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.

#### 6. DBE Certification and Decertification Status

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

3. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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

4. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

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

5. STATE ENERGY CONSERVATION PLAN

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

6. ALLOWABILITY OF COSTS

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

7. RELEASE OF FUNDS WITHHELD FROM SUBCONTRACTORS

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

8. LICENSE FOR FEDERAL GOVERNMENT PURPOSES

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

9. IDENTIFICATION OF DOCUMENTS

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

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

#### 10. RECORDS

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

#### 11. AUDITS

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

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

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

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

12. FLY AMERICA REQUIREMENTS.

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

13. ENERGY CONSERVATION.

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

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

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

of 1986 on CONSULTANT to the extent the Federal Government deems appropriate.

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

#### 15. DEBARMENT

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

#### 16. CLEAN AIR AND WATER POLLUTION ACTS

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

#### 17. LOBBYING

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

**ATTACHMENT G-1**

**Exhibit 10-O1: Local Agency Consultant DBE Commitment  
(Inclusive of all DBEs at time of proposal)**

NOTE: Please refer to instructions on the reverse side of this form.

<b>Consultant to Complete this Section</b>			
<b>1. Local Agency Name:</b> _____ <b>2. Project Location:</b> _____ <b>3. Project Description:</b> _____ <b>4. Consultant Name:</b> _____ <b>5. Contract DBE Goal %:</b> _____			
<b>DBE Commitment Information</b>			
6. Description of Services to be Provided	7. DBE Firm Contact Information	8. DBE Cert. Number	9. DBE %
<b>Local Agency to Complete this Section</b>		10. Total % Claimed	_____ %
<b>16. Local Agency Contract Number:</b> _____  <b>17. Federal-aid Project Number:</b> _____  <b>18. Proposed Contract Execution Date:</b> _____  Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate:  _____		<b>11. Preparer's Signature</b> _____  <b>12. Preparer's Name (Print)</b> _____  <b>13. Preparer's Title</b> _____  <b>14. Date</b> <b>15. (Area Code) Tel. No.</b> _____	
<b>19. Local Agency Representative Name (Print)</b> _____  <b>20. Local Agency Representative Signature</b> <b>21. Date</b> _____  <b>22. Local Agency Representative Title</b> <b>23. (Area Code) Tel. No.</b> _____			

**Distribution:** (1) Original – Submit with Award Package  
(2) Copy – Local Agency files

## INSTRUCTIONS - LOCAL AGENCY CONSULTANT DBE COMMITMENT

### Consultant Section

*The Consultant shall:*

1. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
2. **Project Location** - Enter the project location as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc)..
4. **Consultant Name** - Enter the consultant's firm name.
5. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-I form. See LAPM Chapter 10.
6. **Description of Services to be Provided** - Enter item of work description of services to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
7. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
8. **DBE Cert. Number** - Enter the DBEs Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract.)
9. **DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
10. **Total % Claimed** – Enter the total participation claimed. If the Total % Claimed is less than item “6. Contract DBE Goal”, a Good Faith Effort (GFE) is required.
11. **Preparer's Signature** – The person completing this section of the form for the consultant's firm must sign their name.
12. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the consultant.
13. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
14. **Date** - Enter the date this section of the form is signed by the preparer.
15. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the consultant.

### Local Agency Section:

*The Local Agency representative shall:*

16. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
17. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
18. **Contract Execution Date** - Enter the date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
19. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
20. **Local Agency Representative Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
21. **Date** - Enter the date the Local Agency Representative signs the form.
22. **Local Agency Representative Title** - Enter the position/title of the person signing this section of the form.
23. **(Area Code) Tel. No.** - Enter the area code and telephone number of the Local Agency representative signing this section of the form.

**ATTACHMENT G-2**

**Exhibit 10-O2: Local Agency Consultant DBE Information  
(Inclusive of all DBEs listed at bid proposal)**

NOTE: Please refer to instructions on the reverse side of this form.

<b>Consultant to Complete this Section</b>			
<b>1.</b> Local Agency Name: _____ <b>2.</b> Project Location: _____ <b>3.</b> Project Description: _____ <b>4.</b> Total Contract Award Amount: \$ _____ <b>5.</b> Consultant Name: _____ <b>6.</b> Contract DBE Goal %: _____ <b>7.</b> Total Dollar Amount for <u>all</u> Subcontractors: \$ _____ <b>8.</b> Total Number of <u>all</u> Subcontractors: _____			
<b>Award DBE Information</b>			
9. Description of Services to be Provided	10. DBE Firm Contact Information	11. DBE Cert. Number	12. DBE Dollar Amount
<b>Local Agency to Complete this Section</b>		13. Total Dollars Claimed	12. DBE Dollar Amount
<b>20.</b> Local Agency Contract Number: _____ <b>21.</b> Federal-aid Project Number: _____ <b>22.</b> Contract Execution Date: _____ Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate: _____		\$ _____	\$ _____
<b>23.</b> Local Agency Representative Name (Print) _____		14. Total % Claimed	_____ %
<b>24.</b> Local Agency Representative Signature <b>26.</b> Local Agency Representative Title		<b>15.</b> Preparer's Signature _____	
<b>25.</b> Date _____ <b>27.</b> (Area Code) Tel. No. _____		<b>16.</b> Preparer's Name (Print) _____	
<b>Caltrans to Complete this Section</b>		17. Preparer's Title	
Caltrans District Local Assistance Engineer (DLAE) certifies that this form has been reviewed for completeness: _____		_____	
28. DLAE Name (Print)	29. DLAE Signature	30. Date	18. Date
			19. (Area Code) Tel. No.

**Distribution:** (1) Copy – Email a copy to the Caltrans District Local Assistance Engineer (DLAE) within 30 days of contract award. Failure to send a copy to the DLAE within 30 days of contract award may result in delay of payment.  
(2) Copy – Include in award package sent to Caltrans DLAE (3) Original – Local agency files

## INSTRUCTIONS - LOCAL AGENCY CONSULTANT DBE INFORMATION

### Consultant Section

*The Consultant shall:*

1. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
2. **Project Location** - Enter the project location as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
4. **Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
5. **Consultant Name** - Enter the consultant's firm name.
6. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-I form. See LAPM Chapter 10.
7. **Total Dollar Amount for all Subcontractors** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
8. **Total number of all subcontractors** – Enter the total number of all subcontracted consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
9. **Description of Services to be Provided** - Enter item of work description of services to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
10. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
11. **DBE Cert. Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract.)
12. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE, and include DBEs that are not identified as subcontractors on the Exhibit 10-O1 form. See LAPM Chapter 9 for how to count full/partial participation.
13. **Total Dollars Claimed** – Enter the total dollar amounts for columns 12 and 13.
14. **Total % Claimed** – Enter the total participation claimed for columns 12 and 13. SUM = (item "14. Total Participation Dollars Claimed" divided by item "4. Total Contract Award Amount"). If the Total % Claimed is less than item "6. Contract DBE Goal", a Good Faith Effort (GFE) is required.
15. **Preparer's Signature** – The person completing this section of the form for the consultant's firm must sign their name.
16. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the consultant.
17. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
18. **Date** - Enter the date this section of the form is signed by the preparer.
19. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the consultant.

### Local Agency Section:

*The Local Agency representative shall:*

20. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
21. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
22. **Contract Execution Date** - Enter the date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
23. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
24. **Local Agency Representative Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
25. **Date** - Enter the date the Local Agency Representative signs the form.
26. **Local Agency Representative Title** - Enter the position/title of the person signing this section of the form.
27. **(Area Code) Tel. No.** - Enter the area code and telephone number of the Local Agency representative signing this section of the form.

### Caltrans Section:

*Caltrans District Local Assistance Engineer (DLAE) shall:*

28. **DLAE Name (Print)** – Clearly enter the name of the DLAE.
29. **DLAE Signature** – DLAE must sign this section of the form to certify that it has been reviewed for completeness.
30. **Date** - Enter the date that the DLAE signs this section the form.

**ATTACHMENT G-3**

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

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

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

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

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



**FINAL REPORT – UTILIZATION OF  
DISADVANTAGED BUSINESS  
ENTERPRISES (DBE), FIRST-TIER  
SUBCONTRACTORS  
CEM 2402(F) (Rev. 02/2008)**

The form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, Federal-aid Project No., the Administering Agency, the Contract Completion Date and the Estimated Contract Amount. It requires the prime contractor name and business address. The focus of the form is to describe who did what by contract item number and descriptions, asking for specific dollar values of item work completed broken down by subcontractors who performed the work both DBE and non-DBE work forces. DBE prime contractors are required to show the date of work performed by their own forces along with the corresponding dollar value of work.

The form has a column to enter the Contract Item No. (or Item No's) and description of work performed or materials provided, as well as a column for the subcontractor name and business address. For those firms who are DBE, there is a column to enter their DBE Certification Number. The DBE should provide their certification number to the contractor and notify the contractor in writing with the date of the decertification if their status should change during the course of the project.

The form has six columns for the dollar value to be entered for the item work performed by the subcontractor.

The Non-DBE column is used to enter the dollar value of work performed for firms who are not certified DBE.

The decision of which column to be used for entering the DBE dollar value is based on what program(s) status the firm is certified. This program status is determined by the California Unified Certification Program by ethnicity, gender, ownership, and control issues at time of certification. To confirm the certification status and program status, access the Department of Transportation Civil Rights web site at: <http://www.dot.ca.gov/hq/bep> or by calling (916) 324-1700 or the toll free number at (888) 810-6346.

Based on this DBE Program status, the following table depicts which column to be used:

<b>DBE Program Status</b>	<b>Column to be used</b>
If program status shows DBE only with no other programs listed	DBE

If a contractor performing work as a DBE on the project becomes decertified and still performs work after their decertification date, enter the total dollar value performed by this contractor under the appropriate DBE identification column.

If a contractor performing work as a non-DBE on the project becomes certified as a DBE, enter the dollar value of all work performed after certification as a DBE under the appropriate identification column.

Enter the total of each of the six columns in Form CEM-2402(F).

Any changes to DBE certification must also be submitted on Form-CEM 2403(F).

Enter the Date Work Completed as well as the Date of Final Payment (the date when the prime contractor made the “final payment” to the subcontractor for the portion of work listed as being completed).

The contractor and the resident engineer sign and date the form indicating that the information provided is complete and correct.

**ATTACHMENT H**  
**State Required Clauses**

## **ATTACHMENT H-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 H-2**

### **NONDISCRIMINATION ASSURANCES**

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

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

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

5. That where CONSULTANT receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

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

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

Appendix C;

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

Appendix D;

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

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

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

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

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

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

11. CONSULTANT shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the

administration on its DBE Program or the requirements of 49 CFR Part 26. CONSULTANT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure 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 H-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 H-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 H-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 H-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 H-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 H-2.

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

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

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

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

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

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

(Include in deeds)\*

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

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

## **ATTACHMENT H-3, STATE DEPARTMENT OF TRANSPORTATION REQUIREMENTS**

### **Caltrans Non – Discrimination**

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

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

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

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

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

**APPENDIX D-1**

**INSURANCE REQUIREMENTS**

Minimum Insurance Coverages. CONSULTANT shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under 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.
—	<b>Workers' Compensation Insurance</b> 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.
—	<b>Commercial General Liability Insurance</b> 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, Caltrans, <u>all client jurisdictions</u> and their commissioners, officers, representatives, agents and employees are to be named as additional insureds. Such insurance as afforded by this endorsement shall be primary as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.
—	<b>Business Automobile Insurance</b> 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.
—	<b>Umbrella Insurance</b> in the amount of \$5,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance.
—	<b>Errors and Omissions Professional Liability Insurance</b> 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

	<p>CONSULTANT and any subcontractor/consultant shall relieve the CONSULTANT of the responsibility for providing this Errors &amp; 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.</p>
<p>—</p>	<p><b>Property Insurance</b> 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.</p>
<p><b>Deductibles and Retentions.</b> CONSULTANT shall be responsible for payment of any deductible or retention on CONSULTANT's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.</p> <p>In the event that MTC seeks coverage as an additional insured under any CONSULTANT insurance policy that contains a deductible or self-insured retention, CONSULTANT shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of CONSULTANT, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONSULTANT or subconsultant is not a named defendant in the lawsuit.</p> <p><b>Claims Made Coverage.</b> If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, CONSULTANT shall:</p> <ol style="list-style-type: none"> <li>(1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;</li> <li>(2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and</li> <li>(3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, CONSULTANT shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.</li> </ol> <p><b>Failure to Maintain Insurance.</b> All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of CONSULTANT's personnel, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally accepted. CONSULTANT must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.</p> <p><b>Certificates of Insurance:</b> Prior to commencement of any work hereunder, CONSULTANT shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such</p>	

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.

**Disclaimer:** The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant hereto, including, but not limited to, liability assumed pursuant to Article 9 of *Appendix D*.

**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 RFQ provisions. If such objections are not brought to MTC's attention consistent with the protest provisions of this RFQ, compliance with the insurance requirements will be assumed.**

## APPENDIX E-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.

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Date

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(Signature of authorized official)

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(Type/print name and title)

**APPENDIX E-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)

**APPENDIX F**

**IRAN CONTRACTING ACT**  
(Public Contract Code sections 2202-2208)

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

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

**OPTION #1 - CERTIFICATION**

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

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

**OPTION #2 – EXEMPTION**

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