



December 5, 2013

REQUEST FOR PROPOSAL (RFP)

**Freeway Service Patrol
Automatic Vehicle Locator System**

NOTICE IS HEREBY GIVEN that the Metropolitan Transportation Commission Service Authority for Freeways and Expressways (MTC SAFE) invites your firm to submit a proposal for an Automatic Vehicle Locator (AVL) System, including MTC SAFE's purchase of hardware, software, installation, testing, training, evaluation, repair, warranty, commissioning, maintenance, and system support services.

The Request for Proposal (RFP) documents for this project are available for download on the MTC website at <http://procurements.mtc.ca.gov/>. Proposers are responsible for checking the website for any Addenda that may be issued relative to this RFP. Responses should be submitted in accordance with the instructions set forth in the RFP.

Interested firms must submit an original and six (6) copies, as well as one electronic PDF version, of their proposal by **4:00 p.m., January 16, 2014**, in accordance with the instructions contained in the RFP. Other key RFP Dates are listed in Section V, Contractor Selection Timetable of the RFP.

Any contract entered into as a result of this RFP will be funded in whole with federal funds from U.S. Federal Highway Administration. Accordingly, the requirements included in Attachment H, Federal Requirements of Appendix D, MTC SAFE Standard Contractor Contract, and Appendices F through F-5 to this RFP shall apply to this procurement.

MTC SAFE Point of Contact
Alice Truong, Contract Specialist
Metropolitan Transportation Commission
Service Authority for Freeways and Expressways
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
Tel: (510) 817-5749
E-mail: atruong@mtc.ca.gov

Thank you for your interest.

AMY REIN WORTH, CHAIR
Cities of Contra Costa County

DAVE CORTESE, VICE CHAIR
Santa Clara County

ALICIA C. AGUIRRE
Cities of San Mateo County

TOM AZUMBRADO
*U.S. Department of Housing
and Urban Development*

TOM BATES
Cities of Alameda County

DAVID CAMPOS
City and County of San Francisco

BILL DODD
Napa County and Cities

DORENE M. GIACOPINI
U.S. Department of Transportation

FEDERAL D. GLOVER
Contra Costa County

SCOTT HAGGERTY
Alameda County

ANNE W. HALSTED
*San Francisco Bay Conservation
and Development Commission*

STEVE KINSEY
Marin County and Cities

SAM LICCARDIO
San Jose Mayor's Appointee

MARK LUCE
Association of Bay Area Governments

JAKE MACKENZIE
Sonoma County and Cities

JOE PIRZYNSKI
Cities of Santa Clara County

JEAN QUAN
Oakland Mayor's Appointee

BIJAN SARTIPI
*State Business, Transportation
and Housing Agency*

JAMES P. SPERING
Solano County and Cities

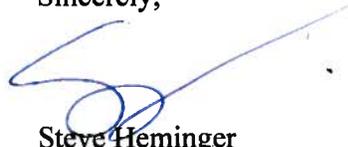
ADRIENNE J. TISSIER
San Mateo County

SCOTT WIENER
San Francisco Mayor's Appointee

STEVE HEMINGER
Executive Director

ANDREW B. FREMIER
Deputy Executive Director

Sincerely,



Steve Heminger
Executive Director

SH: rr: at

J:\CONTRACT\Procurements\Operations & Support Svcs\RFPs\SAFE\FSP AVL 2014\FSP AVL RFP_final.docx

REQUEST FOR PROPOSAL

to the

METROPOLITAN TRANSPORTATION COMMISSION
SERVICE AUTHORITY FOR FREEWAYS AND EXPRESSWAYS

FREEWAY SERVICE PATROL
AUTOMATIC VEHICLE LOCATOR SYSTEM

December 5, 2013

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

TABLE OF CONTENTS

I. MTC SAFE AND PROJECT DESCRIPTION 1
 A. MTC SAFE..... 1
 B. Project Description 1
II. PROPOSER MINIMUM QUALIFICATIONS..... 1
III. SCOPE OF WORK, PERIOD OF PERFORMANCE, AND BUDGET..... 2
 A. Scope of Work..... 2
 B. Period of Performance 2
 C. Budget..... 2
IV. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION..... 2
V. PROPOSERS’ CONFERENCE AND REQUESTS FOR CLARIFICATION OR EXCEPTIONS..... 3
VI. CONTRACTOR SELECTION TIMETABLE..... 3
VII. SUBMITTAL OF PROPOSALS 4
VIII. FORM OF PROPOSAL 5
IX. PROPOSAL EVALUATION 9
 A. Verification of Minimum Qualifications 9
 B. Review for General Responsiveness..... 9
 C. Evaluation Panel and Evaluation Criteria 10
 D. Proposer Discussions 10
 E. Request for Best and Final Offer 11
X. GENERAL CONDITIONS 11
 A. Award 11
 B. Contract Arrangements 11
 C. Selection Disputes 12
 D. Public Records..... 13
 E. Key Personnel 14
 F. Conflicts Of Interest 14
 G. Personally Identifiable Information..... 14
 H. Prevailing Wage Rates, Apprenticeships, and Payroll Records..... 14
APPENDIX A, SCOPE OF WORK 16
APPENDIX B, COST AND PRICE ANALYSIS FORM 17
APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT 22
APPENDIX D, MTC SAFE STANDARD CONTRACTOR CONTRACT 23
ATTACHMENT A, SCOPE OF WORK..... 40
ATTACHMENT A-1, TASK ORDER PROCESS 41
ATTACHMENT A-2, TASK ORDER FORM 43
ATTACHMENT B, PROJECT SCHEDULE 46
ATTACHMENT C, COMPENSATION AND METHOD OF PAYMENT 47
ATTACHMENT C-1, COST AND PRICE ANALYSIS..... 48
ATTACHMENT D, KEY PERSONNEL ASSIGNMENTS 50
ATTACHMENT E, INSURANCE AND FINANCIAL SECURITY (BOND) PROVISIONS 51
ATTACHMENT F, SPECIAL CONDITIONS RELATING TO PERSONALLY IDENTIFIABLE INFORMATION..... 54
ATTACHMENT G, SUBCONSULTANT LIST 58
ATTACHMENT H, FEDERALLY-REQUIRED CLAUSES 59
ATTACHMENT H-1, LOCAL AGENCY DBE COMMITMENT 66
ATTACHMENT H-2, LOCAL AGENCY CONSULTANT DBE INFORMATION..... 68
ATTACHMENT H-3, MONTHLY UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) FIRST-TIER SUBCONTRACTS FORM..... 70
ATTACHMENT H-4, FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) FIRST-TIER SUBCONTRACTS FORM..... 71
ATTACHMENT I, STATE REQUIRED CLAUSES 74
ATTACHMENT I-1, FAIR EMPLOYMENT PRACTICES ADDENDUM 75
ATTACHMENT I-2 NONDISCRIMINATION ASSURANCES..... 82
ATTACHMENT I-3, STATE DEPARTMENT OF TRANSPORTATION REQUIREMENTS 91
APPENDIX D-1, INSURANCE REQUIREMENTS..... 92
APPENDIX E, NOT USED 95
APPENDIX F, FEDERAL REQUIREMENTS..... 96
APPENDIX F-1, CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS 100
APPENDIX F-2, CERTIFICATION OF RESTRICTIONS ON LOBBYING 103
APPENDIX F-3, LOCAL AGENCY CONTRACTOR DBE COMMITMENT..... 104
APPENDIX F-4, LOCAL AGENCY CONTRACTOR DBE INFORMATION..... 106
APPENDIX F-5, DBE INFORMATION – GOOD FAITH EFFORTS..... 108
APPENDIX G, IRAN CONTRACTING ACT 111

I. MTC SAFE AND PROJECT DESCRIPTION

A. MTC SAFE

MTC SAFE was created by California state legislation passed in 1985, codified at Streets and Highways Code § 2550 et seq., effective January 1, 1986, to identify and respond to freeway incidents to increase the reliability of the freeway system and better manage traffic flow.

B. Project Description

The Bay Area Freeway Service Patrol (FSP) is a joint project of the Metropolitan Transportation Commission Service Authority for Freeways and Expressways (MTC SAFE), the California Highway Patrol (CHP) and the California Department of Transportation (Caltrans). The goals of the program are to improve motorist safety and reduce traffic congestion within the Bay Area. FSP tow trucks clear disabled vehicles and other obstructions, thus reducing traveler delay, secondary accidents and the harmful emissions caused by stop-and-go traffic. The service is provided by private tow truck companies, selected through a competitive bid process, under contract to MTC SAFE. A fleet of 91 trucks (70 tow trucks, 10 pickup trucks and 2 flatbeds - plus 9 backup trucks) patrols 550 center-lane miles of the Bay Area's freeways.

A key component of the San Francisco Bay Area FSP program is the computerized communications/automatic vehicle location (AVL) system that makes real-time tracking and management of the 91 truck fleet more efficient. This system improves communication between CHP dispatchers and on-the-scene tow trucks. This ensures that the nearest available truck is dispatched to quickly clear freeway lanes and help motorists with disabled vehicles. The system also allows the partner agencies to closely supervise tow truck operations, validate invoices and evaluate the performance of the program. Through the AVL, MTC SAFE can communicate with tow operators, collect statistics on tow operator assists (e.g., incident locations and types, etc.) and ensure tow contractor accountability.

The selected Contractor shall develop and replace the existing in-vehicle hardware and server/end-user applications and may develop other key program management software applications. The detailed description of MTC SAFE's requirements and the schedule to develop and test the system is found in *Appendix A, Scope of Work*.

II. PROPOSER MINIMUM QUALIFICATIONS

Proposals must demonstrate that the firm or team submitting the proposal ("Proposer") meets the following Minimum Qualifications to be eligible for consideration for this project.

- Proposer must have an AVL system that connects to the Internet and is managed within its company. This system must have existed for at least a year.
- The Proposer's team must have a minimum of one year demonstrable experience developing applications for mobile devices.
- The Proposer's team must have a minimum of one year demonstrable experience integrating its products with other communications systems to ensure interoperability.

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

A. Scope of Work

The scope of work for the project is provided in *Appendix A, Scope of Work*. The firm selected to enter into a contract (“Contractor”) will be expected to perform all work necessary to complete the scope of work. The project will be divided into four phases throughout the course of the contract. Project phases are as follows:

- Phase I – System Generation
- Phase II – System Delivery
- Phase III – System Upgrade
- Phase IV – Support and Maintenance

In addition to the fixed-price contract for the above Phases I through IV, there may be a portion of as-needed work for enhancements that will be assigned pursuant to MTC SAFE-initiated task orders. Payment for work performed under task orders may be deliverables-based or time and materials, as determined by the MTC SAFE Project Manager. A sample task order form is attached hereto as Attachment A-2, Task Order Form to *Appendix D, MTC SAFE Standard Contractor Contract*.

B. Period of Performance

The period of performance for this contract shall begin on or about April 1, 2014 through June 30, 2020. Phase I shall consist of design and initial testing to be completed by January 1, 2015. The Contractor and MTC SAFE will further test the baseline production system in Phase II, which shall commence with the final installation of FSP equipment in trucks by July 2015. Phase III upgrades to the baseline system are estimated to occur between October 2015 and January 2016. Phase IV shall consist of as-needed support and maintenance and will begin after Phase II concludes, continuing until June 30, 2020.

At MTC SAFE’s sole option, the contract may be extended for up to five (5) additional years, subject to the annual budgetary approval processes of MTC SAFE.

C. Budget

MTC SAFE has estimated the total cost for the project to be approximately nine hundred thousand dollars (\$900,000), which includes all developments costs, a fixed task order budget of about one hundred thousand dollars (\$100,000) for enhancements, and approximately five years of licensing and maintenance fees. Additional funding may be available in future Fiscal Years (FY) subject to approval of future MTC SAFE budgets.

IV. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

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. Contractor’s DBE participation on this Agreement will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

MTC SAFE has established a Disadvantaged Business Enterprise (DBE) contract goal of 3% for the contract entered into as a result of this RFP. Proposers are required to document their activities in the solicitation and selection of subcontractors on Appendix F-1, Local Agency Contractor DBE Information, and Appendix F-3, DBE Information – Good Faith Efforts respectively. A report on the Utilization of Disadvantaged Business Enterprises (DBE) First–Tier Subcontracts must be included with all invoices. MTC SAFE may withhold payment pending receipt of such report. For the complete DBE participation provisions applicable to this procurement, see Attachments H - H-4 to Appendix D, MTC SAFE Standard Contractor Contract.

V. PROPOSERS’ CONFERENCE AND REQUESTS FOR CLARIFICATION OR EXCEPTIONS

A Proposers’ Conference will be held at 11:00 a.m., on December 17, 2013 at the Joseph P. Bort MetroCenter Building, 101 8th Street, Oakland, in Fishbowl Conference Room. Attendance at the conference is encouraged; however is not mandatory for proposers.

Any addenda will be posted on MTC’s website, <http://procurements.mtc.ca.gov/>. All Proposers are responsible for checking the website for any addenda to the bid documents.

Any requests for clarification of or exceptions to RFP requirements must be received by MTC SAFE no later than 4:00 p.m., on January 3, 2014, to guarantee response or consideration. MTC SAFE reserves the right to reject any proposal that contains unauthorized conditions or exceptions.

VI. CONTRACTOR SELECTION TIMETABLE

11:00 a.m., on Tuesday, December 17, 2013	Proposers’ Conference, at 101 8th Street, Oakland, CA 94607, Fishbowl Conference Room
4:00 p.m., on Friday, January 3, 2014	Closing date/time for receipt of requests for modifications/exceptions
No later than five (5) working days prior to the date proposals are due.	Deadline for protesting RFP provisions
4:00 p.m., Thursday, January 16, 2014	Closing date/time for receipt of proposals
January 29 - 30, 2014*	Interviews/Discussions
Week of February 3, 2014*	Issue Request for Best and Final Offers, if requested

4:00 p.m., February 12, 2014*	Closing date/time for receipt of Best and Final Offers, if requested
March 14, 2014*	MTC Operations Committee Approval

**Interview/discussions, award and approval dates are approximates and are subject to change before or after the closing date of the RFP.*

VII. SUBMITTAL OF PROPOSALS

1. Interested firms must submit an original and six (6) copies, as well as one electronic PDF version, of their proposal by **4:00 p.m., January 16, 2014**. **Submission of an electronic copy of the proposal without hard copies will not satisfy the submission requirement.**
2. Proposals are to be addressed as follows:
FSP Automatic Vehicle Locator (AVL) System RFP
Attention: Alice Truong, Contract Specialist
101 8th Street, 3rd Floor Receptionist
Oakland, CA 94607
3. Proposer's name and return address must also appear on the envelope.
4. Proposals will be received only at the address shown above and **no later than the date and time indicated**. MTC SAFE is not responsible for deliveries delayed for any reason. Any proposals received after said date and time or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened.
5. No proposals submitted solely by email and no faxed proposals will be considered.
6. All proposals, whether delivered by an employee of the Proposer, U.S. Postal Service, courier or package delivery service, must be received and time stamped at the stated address **prior to or no later than the time designated**. The timestamp located on the 3rd floor at the receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of proposals
7. Contractor agrees and acknowledges all RFP specifications, terms and conditions and indicates ability to perform by submission of a proposal.
8. A signed proposal submitted to MTC SAFE in response to this RFP shall constitute a binding offer from Contractor to contract with MTC SAFE according to the terms of the proposal for a period of one hundred twenty (120) days after the proposals are due to MTC SAFE.
9. A Proposal may be withdrawn at any time before the date and time when Proposals are due by submitting a written request for its withdrawal to the MTC SAFE Project Manager.

10. This RFP does not commit MTC SAFE to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFP.
11. Only one proposal will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.
12. MTC SAFE reserves the right to accept or reject all proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all proposers.
13. MTC SAFE reserves the right in its sole discretion not to enter into any contract as a result of this RFP.
14. If the selected proposer fails to enter into a contract with MTC SAFE in a timely manner as determined by MTC SAFE, in accordance with the terms and conditions of this RFP, MTC SAFE reserves the right to reject the proposal and enter into a contract with the next highest scoring firm.

VIII. FORM OF PROPOSAL

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

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

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

Each proposal must include the following:

A. Transmittal Letter

Proposals must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and the name and telephone number of a contact person, if different from the signature. Indicate whether there are any conflicts of interest, actual or apparent, that would limit the Proposer's ability to provide the requested services and describe the plan for mitigating such conflicts. Acknowledge the receipt of any addendum to the RFP. Indicate that the Proposal is a firm offer to enter into a contract to perform work related to this RFP for a period of one hundred twenty (120) days from the due date for Proposals.

B. Title Page

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

C. Table of Contents

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

D. Overview and Summary

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

1. A discussion of the project's purpose;
2. A summary of proposed approach for implementing the project;
3. A description of particular challenges anticipated in implementing the approach, including potential problem areas, scheduling issues, and any potential obstacles to successful and timely completion of the project; and
4. The assumptions made in selecting the approach.

E. Project Concept

This section will describe the proposed AVL system. The concept proposal should:

1. Describe in non-technical language the Proposer's current AVL product and the customization required to build the system described in *Appendix A, Scope of Work*. This should not exceed six (6) double-spaced pages.
2. Include the requirements checklist found in *Appendix A, 3.0 Requirements Compliance Table*, completed in accordance with the instructions provided in that section. This document is the standardized format MTC SAFE will use to determine which of the requested mandatory and optional features have been included in the proposal. The Proposer must use the spreadsheet version of this form, a copy of which can be found on the MTC website at <http://procurements.mtc.ca.gov>.
3. Use schematics and diagrams to illustrate the proposed network configuration.

4. Clearly identify all aspects of the current FSP system to be replaced or eliminated and where interfaces are to be built (see *Appendix A, Background and Summary* and *Appendix A, 5.0 System Interfaces* for context).
5. List and briefly describe the sub-systems and physical components in the proposed system.
6. Include, if appropriate, additional explanatory materials or specifications on the component parts of the proposed system. Such materials should not exceed 12 pages in total length.

F. Work Plan

This section should present a work plan for the tasks described in *Appendix A, Scope of Work* and that are necessary to realize the Project Concept. The proposed work plan should:

1. Discuss how the Proposer will conduct the tasks and produce deliverables. This should include a draft schedule at least as detailed as that in *Appendix A, Section 2.0 Project Schedule*, which lays out guidance and requirements for the project schedule. *Appendix A, Section 1.0 Tasks and Deliverables*, describes the minimum required tasks and deliverables.

The proposal should discuss the tasks in sufficient detail to demonstrate a clear understanding of the project and component tasks. The proposal may include additional tasks or subtasks the Proposer believes are necessary to accomplish the project goals. The schedule should show the expected sequence of tasks, subtasks and milestones.

2. Provide a detailed staffing plan for each task. Provide an organizational chart that shows roles and responsibilities of key personnel and reporting structure, including reporting and communication relationships between MTC SAFE, Contractor staff, and subcontractors, if any.
3. Describe approach to managing resources and maintaining quality results. Include a description of the role of any subcontractors, their specific responsibilities, and how their work will be supervised to maintain quality results.
4. Identify and explain any problem areas and/or potential obstacles (such as maintaining schedule, budget overruns, feasibility, etc.) to successful completion of the *Appendix A, Scope of Work*. Discuss methods, formal and informal, that Proposer will use to track and resolve these problems/obstacles during the project.

G. Qualifications and References

1. Describe proposed team's qualifications specific to the requirements set forth in Section II, Proposer Minimum Qualifications and Requirements. Identify the personnel, including subcontractors' personnel, whose expertise or experience addresses each of the specified

needs. Please be specific and provide documentation regarding the required experience and AVL product. Proposers are welcome to identify and provide examples of any other qualifications they feel are critical to the successful completion of *Appendix A, Scope of Work*.

2. Identify key personnel (including subcontractor personnel) assigned to the project and briefly discuss individual qualifications to perform each task. Each key personnel resume should not exceed two pages.
3. Provide a succinct description (one page maximum for each project) of any previous projects similar to the services requested, indicating the project title, duration, budget, sponsoring agency and sponsor project manager, and roles played by individuals proposed for this study.
4. Provide a minimum of three (3) references and their contact information. In addition, if subcontractors are used, provide a minimum of three (3) references for each subcontractor. Include the name of the agency for whom the work was performed, year performed, name of the contact person, email address, and their telephone number. References may be checked for all proposers.
5. Provide at least one sample of a written technical report or memo and two samples of material developed for a similar effort. The samples must have been prepared by key members of the Contractor team and should identify the authors. Only one copy of each sample is required, and the samples will be returned after proposal evaluation, upon request. The samples will be considered in evaluating firm and staff expertise and experience, and written presentation effectiveness.
6. Provide a summary of all contracts your firm (including subcontractors) has held with MTC, MTC SAFE, BATA, BAIFA, or BAHA in the past three years, including a brief description of the scope of work, the contract amount, and date of execution.

H. Cost Proposal

Based on the tasks and staffing plan described in the Work Plan VII. Section F, the Proposer shall provide a detailed budget. The budget should include a project budget and a line item budget with billing rates for each phase.

1. The Project budget form can be found in *Appendix A, 4.0 Project Budget Form*. This Project Budget Form must be submitted with the proposal. A fillable electronic spreadsheet format is available on the MTC web site at <http://procurements.mtc.ca.gov/>.
2. A line item budget should be submitted to include project Phases I through IV (not including task order work). The line item budget should present a breakdown of costs by cost categories, including billing rates for key personnel and job classifications. The line item budget should be set forth on the Cost and Price Analysis Form attached hereto as

Appendix B to this RFP. This Cost and Price Analysis Form must be submitted with the proposal. A line item budget should also be submitted for proposed subcontractors with contracts estimated to exceed \$25,000. *Appendix B* is available in electronic spreadsheet format at <http://procurements.mtc.ca.gov/>.

I. California Levine Act Statement

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

J. Insurance Provisions

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

(See Section IX.B of the RFP for how to request exceptions to the minimum insurance requirements.)

K. Federal Requirements

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

L. Iran Contracting Act

Submit a signed Iran Contracting Act Document (*Appendix G*).

IX. PROPOSAL EVALUATION

A. Verification of Minimum Qualifications

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

B. Review for General Responsiveness

The Project Manager, in consultation with the MTC SAFE's Office of General Counsel, will conduct an initial review of the proposals for general responsiveness and inclusion of the items requested in *Appendix C*. Proposers failing to meet the Minimum Qualifications and Requirements listed herein this RFP or satisfy the federal Disadvantaged Business Enterprise (DBE) requirements (if applicable), will not be considered responsive. Also, 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 the Form of Proposal may be considered responsive, if evaluation in every criterion is possible. MTC SAFE reserves the right to request additional information from responsive proposers prior to evaluation.

C. Evaluation Panel and Evaluation Criteria

Responsive proposals that meet the Minimum Qualifications listed in Section II, Proposer Minimum Qualifications will then be evaluated by an evaluation panel of MTC SAFE and partner agency staff on the following evaluation factors. The evaluation of the proposals shall be within the sole judgment and discretion of the evaluation panel.

All contact during the evaluation phase shall be through the MTC SAFE Contract Specialist only. Proposers shall neither contact nor lobby any evaluation panel members during the evaluation process. Attempts by proposer to contact and/or influence members of the evaluation panel may result in disqualification of proposer.

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

1. Quality of the Project Concept (25%)
2. Cost Effectiveness (25%)
3. Quality of the Work Plan (20%)
4. Team and Key Personnel Qualifications and Performance (20%)
5. Communication Skills (5%)
6. Non-Core Features included in Project Concept (5%)

D. Proposer Discussions

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

The purpose of discussions with a Proposer on the “short list” will be to identify to that Proposer’s specific deficiencies and weaknesses in its proposal and to provide the Proposer with the opportunity to consider possible approaches to alleviating or eliminating them in its Best and Final Offer (BAFO). These deficiencies or weaknesses may include such things as technical issues, management approach, cost, or team composition. Discussions may take place through written correspondence and/or during face-to-face interviews. The Proposer’s Project Manager as well as other key personnel identified by the evaluation panel will be expected to participate

in any discussions. A proposer on the “short list” invited to participate in discussions will be expected to provide a presentation limited to 20 minutes consisting of an overview of its approach to the Project.

E. Request for Best and Final Offer

Following discussions, if held, proposers on the “short list” will be given the opportunity to revise their written proposals to address the concerns raised during discussions through issuance of Request for Best and Final Offer (BAFO). Following receipt of the BAFOs, the evaluation panel will evaluate the BAFOs against the evaluation criteria.

MTC SAFE reserves the right not to convene oral interviews or discussions, and to make an award on the basis of initial proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint. References may be contacted at any point in the evaluation process.

The panel will recommend a Contractor to the MTC SAFE Executive Director, based on its evaluation of the written proposals or BAFOs and oral interviews or discussions (if held). The Executive Director will review the recommendation and, if he agrees, he will approve the award or forward the recommendation to the MTC Operations Committee for approval.

X. GENERAL CONDITIONS

A. Award

Any award made will be to the Contractor whose proposal is most advantageous to MTC SAFE based on the evaluation criteria defined in Section VIII. If the selected firm fails to enter into a contract with MTC SAFE in a timely manner as determined by MTC SAFE, in accordance with the terms and conditions of this RFP, MTC SAFE reserves the right to reject the proposal of the selected firm and enter into a contract with the next highest scoring firm.

B. Contract Arrangements

MTC SAFE Standard Contractor Contract is attached as *Appendix D*. If a proposer wishes to propose a change to any standard MTC SAFE contract provision, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of requests for clarifications/exceptions. If no such change is requested, the Proposer will be deemed to accept MTC SAFE’s standard contract provisions, unless such language is protested in accordance with Section C below.

The selected Contractor will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1, Insurance Requirements*. Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements in *Appendix D-1*, within ten (10) days of MTC SAFE’s notice that it is the successful proposer. Requests to change MTC SAFE’s insurance requirements should be

submitted on or prior to the closing date for receipt of requests for clarifications/exceptions. MTC SAFE will review the requests and issue an addendum if material changes requested by a prospective proposer are acceptable. Objections to MTC SAFE determinations on requests to change insurance requirements pursuant to the protest provisions of this RFP must be brought to MTC SAFE's attention no later than the deadline for protesting RFP provisions or compliance with all material insurance requirements will be assumed.

The contract resulting from this RFP will be firm-fixed price based on deliverables and as needed task order work as indicated in *Appendix A, 4.0 Project Budget Form*.

C. Selection Disputes

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

1. No later than 4:00 p.m. on the fifth day prior to the date proposals are due, for objections to RFP provisions; or
2. No later than 4:00 p.m. on the third day after the date the firm is notified that it did not meet the minimum qualifications or was found to be non-responsive; or
3. No later than 4:00 p.m. on the third day after the date on which the firm is notified that it was not selected, or the date the MTC Operations Committee authorizes award, whichever is later, for objections to Contractor selection.

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

Protests must clearly and specifically describe the basis for the protest in sufficient detail for the MTC SAFE review officer to recommend a resolution to the Executive Director. The Executive Director will respond to the protest in writing, based on the recommendation of a MTC SAFE review officer.

Should the protester wish to appeal the decision of the Executive Director, it may file a written appeal with the MTC Operations Committee, no later than 4:00 p.m. on the third working day after receipt of the written response from the Executive Director. The MTC Operations Committee's decision will be the final agency decision.

Authorization to award a contract to a particular firm by the MTC Operations 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 or, if the Executive Director's decision is appealed, until the decision of the MTC Operations Committee.

D. Public Records

This RFQ and any material submitted in response to this RFQ are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt by law. Other than proprietary information or other information exempt from disclosure by law, the content of SOQs submitted to MTC SAFE will be made available for inspection consistent with its policy regarding Public Records Act requests.

If the Proposer believes any SOQ content contains trade secrets or other proprietary information that the proposer believes would cause substantial injury to the proposer's competitive position if disclosed, the proposer may request that MTC SAFE withhold from disclosure such proprietary materials by marking each page containing proprietary information, as confidential and shall include the following notice at the front of its SOQ:

“The data on the following pages of this SOQ marked along the right margin with a vertical line contain technical or financial information, which are trade secrets and/or which, if disclosed, would cause substantial injury to the proposer's competitive position. The proposer requests that such data be used for review by MTC SAFE only, but understands that exemption from disclosure will be limited by MTC SAFE's obligations under the California Public Records Act. If a contract is awarded to the Proposer submitting this SOQ, MTC SAFE shall have the right to use or disclose the data, unless otherwise provided by law. [List pages].”

Failure to include this notice with relevant page numbers shall render any “confidential/proprietary” markings inadequate. Individual pages shall accordingly not be treated confidentially. **Any language purporting to render the entire SOQ confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the Proposer may not designate any required SOQ forms or the Cost Proposal as confidential. Consequently, any language purporting to render any SOQ forms or the Cost Proposal as confidential or proprietary will be regarded as ineffective and will be disregarded.**

In the event properly marked data is requested pursuant to the California Public Records Act, the Proposer will be advised of the request. If the SOQ requests that MTC SAFE withhold such data from disclosure and MTC SAFE complies with the Proposer's request, the Proposer shall assume all responsibility for any challenges resulting from the non-disclosure; indemnify and defend MTC SAFE and hold it harmless from and against all claims, legal proceedings, and resulting damages and costs (including but not limited to attorneys' fees that may be awarded to the party requesting such proposer information); and pay any and all costs and expenses relating to the withholding of the proposer information.

If the Proposer does not mark each page containing proprietary information as confidential, does not include the statement described above at the front of its SOQ, and does not request that MTC SAFE withhold information marked as confidential and requested under the California Public Records Act, MTC SAFE shall have no obligation to withhold the information from disclosure, and the Proposer shall not have a right to make a claim or maintain any legal action against MTC SAFE or its commissioners, officers, employees or agents in connection with such disclosure.

E. Key Personnel

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

F. Conflicts Of Interest

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

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

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

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

G. Personally Identifiable Information

Contractor agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment F, Special Conditions Regarding Personally Identifiable Information of Appendix D, MTC SAFE Standard Contractor Agreement.

H. Prevailing Wage Rates, Apprenticeships, and Payroll Records

As applicable, Contractor agrees to comply with applicable sections of the California Labor Code (e.g., Sections 1720 *et seq.* and Title 8 of the California Code of Regulations Sections

16000 *et seq.*) governing the payment of prevailing wages, as determined by the Director of the California

Department of Industrial Relations, in regards to all work performed in the agreement as a result of this RFP. In particular, Contractor's attention is drawn to Labor Code Sections 1771 (payment of prevailing wage rate), 1775 (penalty for non-payment), 1776 (payroll records), and 1777.5 (use of apprentices). Should the Davis-Bacon prevailing wages apply to contract work, the higher wage rate between the federal rate and the California prevailing rate shall apply.

This RFQ and any material submitted in response to this RFQ are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt by law. Other than proprietary information or other information exempt from disclosure by law, the content of SOQs submitted to MTC SAFE will be made available for inspection consistent with its policy regarding Public Records Act requests.

APPENDIX A, SCOPE OF WORK

Please visit <http://procurements.mtc.ca.gov/> to download and/or view Appendix A.

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 SAFE’s commissioners include:

Alicia G. Aguirre	Federal D. Glover	Joe Pirzynski
Tom Azumbrado	Scott Haggerty	Jean Quan
Tom Bates	Anne W. Halsted	Bijan Sartipi
David Campos	Steve Kinsey	James P. Spering
Dave Cortese	Sam Liccardo	Adrienne J. Tissier
Bill Dodd	Mark Luce	Scott Weiner
Dorene M. Giacomini	Jake Mackenzie	Amy Rein Worth

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any MTC SAFE 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 SAFE 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 SAFE from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

APPENDIX D, MTC SAFE STANDARD CONTRACTOR CONTRACT

Instructions: Red
Choices: Blue or Purple

PROFESSIONAL SERVICES AGREEMENT

between

METROPOLITAN TRANSPORTATION COMMISSION
SERVICE AUTHORITY FOR FREEWAYS AND EXPRESSWAYS

and

NAME OF CONTRACTOR

for

AUTOMATIC VEHICLE LOCATOR SYSTEM

FISCAL YEARS 2013-2014 to 2020-2021

PROFESSIONAL SERVICES AGREEMENT
Between METROPOLITAN TRANSPORTATION COMMISSION
SERVICE AUTHORITY FOR FREEWAYS AND EXPRESSWAYS
And **INSERT NAME OF CONTRACTOR**
For FREEWAY SERVICE PATROL
AUTOMATIC VEHICLE LOCATOR SYSTEM

THIS AGREEMENT is made and entered into as of the **xx** day of **Month**, 20____, by and between the Metropolitan Transportation Commission Service Authority for Freeways and Expressways (herein called "MTC SAFE"), a local public agency established pursuant to Streets and Highways Code § 2550 *et seq.*, and **INSERT NAME OF CONTRACTOR**, (herein called "CONTRACTOR") [**"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 SAFE intends to secure a Contractor to provide a Freeway Service Patrol Automatic Vehicle Locator System (herein called "the Project"); and

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

CONTRACTOR's services are described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. CONTRACTOR agrees to perform or secure the performance of all specified services within the maximum payment specified in Article 3,

subject to the prior written approval of a work plan by Robert Rich, (herein called "MTC SAFE Project Manager"). As MTC SAFE Project Manager, Robert Rich is responsible for communication with CONTRACTOR and the administration of this Agreement. MTC SAFE's Executive Director or designated representative may substitute a new MTC Project Manager by written notice to CONTRACTOR.

CONTRACTOR's point of contact and the individual authorized to communicate to MTC SAFE on behalf of CONTRACTOR is **INSERT NAME OF CONTRACTOR's PM** ("CONTRACTOR Project Manager"). A change in the CONTRACTOR Project Manager requires MTC SAFE written approval.

1.1 PROGRESS REPORTS

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

2. PERIOD OF PERFORMANCE

CONTRACTOR'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. CONTRACTOR's services shall be performed in accordance with the schedule included in Attachment B, Project Schedule, attached hereto and incorporated herein by this reference. For task order work, CONTRACTOR'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 SAFE will pay CONTRACTOR for its services for Phases I through IV as described in Attachment A, 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, [**SPELL OUT AMOUNT IN WHOLE DOLLARS (\$_____)**] ("Maximum Payment"). For task order work, CONTRACTOR shall be compensated for its work as specified in signed Task Orders. MTC SAFE shall make payments to CONTRACTOR in accordance with the provisions described in Attachment C, Compensation and Method of Payment, attached hereto and incorporated herein by this reference.

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

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

Payment shall be made by MTC SAFE 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 CONTRACTOR 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. CONTRACTOR shall maintain records documenting compliance with this Article, which shall be subject to the audit requirements of Article 15. CONTRACTOR agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. MTC SAFE reserves the right to direct removal of any individual, including key personnel, assigned to this work.

5. AMENDMENTS

MTC SAFE reserves the right to request changes in the services to be performed by CONTRACTOR. 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 CONTRACTOR and specifically identified as amendments to the Agreement. The MTC SAFE Project Manager is not a designated representative, for purposes of approving an amendment.

6. TERMINATION

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

B. Termination for Default. If CONTRACTOR 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 CONTRACTOR fails to comply with any other material provision of the Agreement, MTC SAFE may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on CONTRACTOR, setting forth the manner in which CONTRACTOR is in default. If CONTRACTOR does not cure the breach or describe to MTC SAFE's satisfaction a plan for curing the breach within the fifteen (15) day period, MTC SAFE may terminate the Agreement for default. In the event of such termination for default, CONTRACTOR 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, CONTRACTOR 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, CONTRACTOR shall be paid for hours worked, plus authorized expenses, not to exceed the maximum payable under the terminated Task Order. Such reimbursement will be offset by any costs incurred by MTC SAFE to complete work required under the Agreement. In no event shall MTC SAFE be required to reimburse CONTRACTOR for any costs incurred for work causing or contributing to the default. If CONTRACTOR has any property in its possession belonging to MTC SAFE, CONTRACTOR will account for the same, and dispose of it in the manner MTC SAFE directs. MTC SAFE shall not in any manner be liable for the CONTRACTOR's actual or projected lost profits had the CONTRACTOR completed the services required by this Agreement.

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

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

CONTRACTOR 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

CONTRACTOR is an independent contractor and not an employee or agent of MTC SAFE and has no authority to contract or enter into any agreement in the name of MTC SAFE. CONTRACTOR has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by CONTRACTOR who are assisting in the performance of services under this Agreement. CONTRACTOR 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. CONTRACTOR shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

9. INDEMNIFICATION

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

- A. Any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by CONTRACTOR caused by any breach of the Agreement or negligent act or omission or willful misconduct of the CONTRACTOR or its officers, employees, subconsultants or agents; or
- B. Any allegation that materials or services provided by CONTRACTOR under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

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

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

10. DATA TO BE FURNISHED BY MTC SAFE

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

10.1 PERSONALLY IDENTIFIABLE INFORMATION

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

10.2 NONDISCLOSURE OF CONFIDENTIAL INFORMATION

MTC SAFE may be required to make available to CONTRACTOR 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 SAFE and CONTRACTOR, Confidential Information shall remain the sole and exclusive property of MTC SAFE, 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 CONTRACTOR; b) CONTRACTOR can demonstrate to have had rightfully in its possession prior to disclosure by MTC SAFE or its contractors, vendors or licensors; c) CONTRACTOR

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.

CONTRACTOR 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 SAFE. CONTRACTOR 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 SAFE, at any time and for any reason, CONTRACTOR shall destroy or return to MTC SAFE, at MTC SAFE'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 SAFE.

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 SAFE by CONTRACTOR or its subconsultants pursuant to this Agreement shall be and are the property of MTC SAFE. MTC SAFE 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 CONTRACTOR or in the hands of any subconsultant upon completion or termination of the work shall be immediately delivered to MTC SAFE. CONTRACTOR hereby assigns to MTC SAFE 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. CONTRACTOR also agrees to execute all papers necessary for MTC SAFE 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 CONTRACTOR'S pre-existing intellectual property secured, developed, written, or produced by CONTRACTOR prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; CONTRACTOR shall retain all right, title and interest in any such pre-existing intellectual property.

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

CONTRACTOR 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 SAFE for subcontract work under this Agreement are listed in Attachment G, Subconsultant List, attached hereto and incorporated herein by this reference. Any subconsultants must be engaged under written contract with the CONTRACTOR with provisions allowing the CONTRACTOR 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 CONTRACTOR.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between MTC SAFE and any subcontractors, and no subcontract shall relieve CONTRACTOR of his/her responsibilities and obligations hereunder. CONTRACTOR agrees to be as fully responsible to MTC SAFE 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 CONTRACTOR. CONTRACTOR's obligation to pay its subcontractors is an independent obligation from MTC SAFE's obligation to make payments to CONTRACTOR.

C. Any substitution of subcontractors listed in Attachment F must be approved in writing by MTC SAFE'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.

13. ASSIGNMENT OF AGREEMENT

CONTRACTOR 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

CONTRACTOR 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. CONTRACTOR further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any

litigation, claim or audit, whichever is longer. Any conflicting language regarding retention of records contained in Attachment H, Federally-Required Clauses, shall supersede this Article.

15. AUDITS

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

CONTRACTOR further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subcontractor agrees that MTC SAFE, 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.

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

16. NOTICES

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

To MTC SAFE:	Attention: Robert Rich Metropolitan Transportation Commission Service Authority for Freeways and Expressways 101 - 8th Street Oakland, CA 94607-4700 Email: rrich@mtc.ca.gov Fax: 510.817-5848
--------------	--

To CONTRACTOR:	Attention: Insert Name of Appropriate Person Contractor's name Contractor's address Contractor's address Email: X Fax: X
----------------	---

17. SOLICITATION OF CONTRACT

CONTRACTOR warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this

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

18. PROHIBITED INTERESTS

CONTRACTOR 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 SAFE. CONTRACTOR 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 SAFE, 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, CONTRACTOR further covenants that it has made a complete disclosure to MTC SAFE 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 SAFE (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 SAFE.

18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

CONTRACTOR 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 SAFE; 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.

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

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

19. LAWS AND REGULATIONS

CONTRACTOR 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 SAFE, 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 SAFE as a recipient of federal or state funds are hereby in turn imposed on CONTRACTOR. Attachment H and its parts, Federal Required Clauses, are attached hereto and incorporated herein by this reference.

20. CLAIMS OR DISPUTES

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

claims for additional compensation and/or time.

CONTRACTOR shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by MTC SAFE, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given MTC SAFE due written notice of a potential claim. The potential claim shall set forth the reasons for which CONTRACTOR 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 SAFE prior to the time that CONTRACTOR has started performance of the work giving rise to the potential claim for additional compensation.

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

If an agreement can be reached which resolves CONTRACTOR'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 CONTRACTOR claim, they may choose to pursue dispute resolution pursuant to Article 24, DISPUTE RESOLUTION, or MTC SAFE may terminate the Agreement.

21. REMEDIES FOR BREACH

In the event CONTRACTOR fails to comply with the requirements of the Agreement in any way, MTC SAFE 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 SAFE or CONTRACTOR 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 SAFE, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as MTC SAFE may deem necessary. The suspension may be due to the failure on the part of CONTRACTOR to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of CONTRACTOR. The

CONTRACTOR shall comply immediately with the written order of MTC SAFE to suspend the work wholly or in part. The suspended work shall be resumed when CONTRACTOR is provided with written direction from MTC SAFE to resume the work.

If the suspension is due to CONTRACTOR'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 CONTRACTOR, all costs shall be at CONTRACTOR's expense and no schedule extensions will be provided by MTC SAFE.

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

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

23. WARRANTY OF SERVICES

A. In the performance of its services, CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR hereunder are deficient because of CONTRACTOR's or subcontractor's failure to perform said services in accordance with the warranty standards set forth above, MTC SAFE shall report such deficiencies in writing to the CONTRACTOR within a reasonable time. MTC SAFE thereafter shall have:

1. The right to have CONTRACTOR re-perform such services at the CONTRACTOR's expense; or
2. The right to have such services done by others and the costs thereof charged to and collected from the CONTRACTOR if within 30 days after written notice to CONTRACTOR requiring such re-performance, CONTRACTOR fails to give satisfactory evidence to the MTC SAFE that it has undertaken said re-performance; or
3. The right to terminate the Agreement for default. CONTRACTOR 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. CONTRACTOR and MTC SAFE 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 SAFE provide a written determination as to the proposed resolution of the dispute. Within twenty-one (21) calendar days of the request, MTC SAFE's Project Manager shall provide a written determination as to the dispute, which shall include the basis for its decision. Upon CONTRACTOR's written acceptance of the Project Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, MTC SAFE 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 CONTRACTOR, 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 SAFE and CONTRACTOR 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. CONTRACTOR must file a government claim pursuant to Government Code section 910 *et seq.* in order to initiate a civil action.

D. Pending Resolution. CONTRACTOR shall continue to work during the dispute resolution process in a diligent and timely manner as directed by MTC SAFE, 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. CONTRACTOR 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 CONTRACTOR and MTC SAFE. 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 SERVICE AUTHORITY FOR
FREEWAYS AND EXPRESSWAYS

NAME OF CONTRACTOR

Steve Heminger, Executive Director

Insert Appropriate Name, Title

Document1

ATTACHMENT A

Scope Of Work

Outline of Services

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

- 1.
 - 2.
- ETC.

MTC SAFE may request additional services on an as-needed basis. All such services shall be authorized by Task Order, initiated and developed according to the detailed task order process described in Attachment A-1, Task Order Process, attached hereto and incorporated herein by this reference. Task Orders shall include, at a minimum, a detailed description of the work to be performed, a completion date for performance, a maximum payment amount, payment terms (deliverables-based or time and materials) and subcontractor 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 SAFE Project Manager (“SAFE PM”) prepares a draft Task Order to issue to CONTRACTOR. The MTC SAFE PM may solicit feedback from CONTRACTOR to facilitate drafting the Task Order.

Step 2* – CONTRACTOR 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 CONTRACTOR for review and comment.

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

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

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

Step 6 – The MTC SAFE PM sends one copy of the fully executed Task Order to the MTC SAFE or MTC SAFE Task Lead who initiates work, and sends another copy to MTC SAFE Finance to encumber funds against the Task Order. The MTC SAFE 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 SAFE Operations Director and CONTRACTOR. Revisions to Task Orders shall require written approval by both the MTC SAFE Operations Director and CONTRACTOR.

Step 8 – The MTC SAFE 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 SAFE PM determines the Task Order is complete, the MTC SAFE PM will send written notification to CONTRACTOR that the Task Order is complete and that all associated invoices are due to MTC SAFE within 30 days. Any balance of budget is made available to spend on future task orders at the MTC SAFE PM's discretion.

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

**The MTC SAFE Project Manager may revise the Task Order and/or CONTRACTOR 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 SAFE Task Lead (if different from MTC SAFE Project Manager):	
4. Description of work:	<i>Summarize key task expectations. For more information, see attached <u>Task Order Budget and Schedule and Detailed Description of Work (attached)</u>.</i>
5. Original Maximum Payment:	
6. Amended Maximum Payment:	<i>Include each amendment to maximum payment, by amendment number, for particular fiscal year.</i>
7. Completion Date:	Date Schedule attached.
8. Payment terms:	<i>Check the one that applies (see below for more information):</i> <input type="checkbox"/> Time and Materials <input type="checkbox"/> Deliverables

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

A. Deliverables-based.

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

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

B. Time and Materials

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

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

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

METROPOLITAN TRANSPORTATION
COMMISSION SERVICE AUTHORITY FOR
FREEWAYS AND EXPRESSWAYS

CONTRACTOR

Melanie Crotty, Operations Director

Insert name and title of authorized individual

Date:

Date:

Task Order Schedule

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

Detailed Description of Work

Task Order #: Title

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

ATTACHMENT B
Project Schedule

Insert *Appendix A 2.0* [Project Schedule](#).

ATTACHMENT C

Compensation and Method of Payment

A. Compensation for Phases I through III. CONTRACTOR shall be paid, as full compensation for the satisfactory completion of the work described in Attachment A, Phases I through III, the firm fixed sum of an amount not-to-exceed _____ (\$ _____), which includes all labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, subcontractors costs, travel, equipment, materials and supplies. In no event shall the total compensation to be paid to the CONTRACTOR under the Agreement exceed the Maximum Payment specified in Article 3 of the Agreement.

MTC SAFE will make an initial payment of 15% of the estimated project development costs, Phases I, II and III, upon the approval of the contract. For Phases I and II, MTC SAFE will make a milestone payment equaling 85% of estimated costs to the CONTRACTOR after satisfactory completion of all deliverables in that stage. For Phase III, MTC SAFE will make a milestone payment after the completion of each deliverable. Payments to the Contractor will be as indicated in Appendix A 4.0 Project Budget.

B. Compensation for Phase IV – Support and Maintenance Costs. CONTRACTOR shall be paid a lump sum amount not to exceed \$ _____ annually for the cost of support and maintenance. Payments to the Contractor will be as indicated in Appendix A 4.0 Project Budget.

C. Payment for Task Orders. Payment for products and services provided under Task Orders shall be authorized in Task Orders executed by the MTC SAFE Project Manager and CONTRACTOR. Task Orders shall include, at a minimum, a detailed description of the work to be performed, a schedule for performance, a specific method of payment (deliverables or time and materials) and a maximum payment. The hourly rates in Attachment D, Key Personnel Assignments, attached hereto and incorporated herein by this reference, shall apply to task orders compensated on a time and materials basis. The maximum amount available for Task Orders is one hundred thousand dollars (\$100,000).

D. Method of Payment. Contractor shall submit an invoice identifying the project deliverable or milestone for which payment is sought no later than thirty (30) days after MTC SAFE's acceptance of such deliverable/milestone. A report on the Monthly Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts in the form set forth in Attachment H-4 must be included with all invoices. MTC SAFE may withhold payment pending receipt of such report. Payment shall be made by MTC SAFE within thirty (30) days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative.

15. OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION			
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED	
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AUDIT		C. DO YOUR CONTRACTS PROVIDE NEGOTIATED OVERHEAD RATES? () NO () YES <i>(IF YES, NAME AGENCY NEGOTIATING RATES)</i>	
D. (If no Government rates have been established, furnish the following information)			
DEPARTMENT OR COST CENTER	RATE	TOTAL INDIRECT EXPENSE POOL	BASE FOR TOTAL
16. EXHIBIT A - SUBCONTRACT COSTS (If more space needed, use blank sheets, identify item number)			
NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT	
		TYPE	AMOUNT
TOTAL			
17. EXHIBIT B - OTHER DIRECT COSTS (If more space needed, use blank sheets, identify item number)			
TOTAL			
CERTIFICATE			
<p>The labor rates and the overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he__has, __has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he__has, __has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.</p> <p><i>For interpretation of the representation including the term "bona fide employee," see Code of Federal Regulations, Title 44, Part 150.</i></p>			
NO. OF CONTRACTOR EMPLOYEES:		STATE INCORPORATED IN:	
[] 500 AND UNDER	[] OVER 500		
[] OVER 750	[] OVER 1,000		
DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF CONTRACTOR		

ATTACHMENT D
Key Personnel Assignments

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

ATTACHMENT E
Insurance and Financial Security (Bond) Provisions

1. INSURANCE

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

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

In the event CONTRACTOR 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 CONTRACTOR's insurance be primary without right of contribution from MTC. Prior to beginning work under this contract, CONTRACTOR 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 CONTRACTOR's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC SAFE. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONTRACTOR 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 CONTRACTOR and CONTRACTOR'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 SAFE.

MTC SAFE 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 CONTRACTOR's operations.

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

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

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC SAFE and having minimum limits of \$5,000,000 per claim, that includes an endorsement for Contingent Bodily Injury and Property Damage. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.

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

6. Property Insurance. Property Insurance covering CONTRACTOR'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 SAFE (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 SAFE.

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

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

D. Deductibles and Retentions. CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR's policies without right of contribution from MTC SAFE. 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 SAFE seeks coverage as an additional insured under any CONTRACTOR insurance policy that contains a deductible or self-insured retention, CONTRACTOR 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 CONTRACTOR, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONTRACTOR 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, CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR's personnel, subcontractors, and equipment have been removed from MTC SAFE's property, and the work or services have been formally accepted. CONTRACTOR must notify MTC SAFE 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, CONTRACTOR shall deliver to MTC SAFE 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 CONTRACTOR are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant hereto, including, but not limited to, liability assumed pursuant to Article 9 of this Agreement.

2. FINANCIAL SECURITY (BONDS)

Not Applicable.

3. ADDITIONAL INSURED

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

- Metropolitan Transportation Commission Service Authority for Freeways and Expressways (MTC SAFE)
- California Department of Transportation (Caltrans)
- California Highway Patrol (CHP)

ATTACHMENT F

Special Conditions Relating to Personally Identifiable Information

Where access to personally identifiable information (“PII”) is required in the performance of a contract or access to PII is not required but physical access to facilities or computer systems is required and such access presents the potential for incidental access and/or inadvertent disclosure of PII, language substantially in conformance with the following clauses shall be inserted in the contract terms and conditions.

CONTRACTOR will have access to personally identifiable information (“PII”) in connection with the performance of the Agreement. PII is any information that is collected or maintained by MTC SAFE or CONTRACTOR that identifies or describes a person or can be directly linked to a specific individual, including that individual’s account. Examples of PII include vehicle license plate number, name, address, phone or fax number, signature, date of birth, or credit card information, bank account number, or travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

1. Right to Audit

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

2. General Confidentiality of Data

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

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

Notwithstanding anything to the contrary in Article 14. Records, of this Agreement, CONTRACTOR agrees to retain PII for no longer than three years. At the conclusion of this retention period, CONTRACTOR agrees to use Department of Defense (“DOD”) approved software to wipe any disks containing PII. Hard drives and computers shall be reformatted and reimaged in an equivalently secure fashion. CONTRACTOR agrees to destroy hard-copy

documents containing PII by means of a cross-cut shredding machine. At the conclusion of the performance period of this Agreement, CONTRACTOR shall submit a certification to the MTC SAFE Project Manager as follows: “All PII whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in Section 2. General Confidentiality of Data of the Attachment F, “Special Conditions Relating to Personally Identifiable Information.”

3. Compliance with Statutes and Regulations

CONTRACTOR agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 *et.seq.*) In addition, CONTRACTOR warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and MTC SAFE relating to the handling and confidentiality of PII and agrees to indemnify MTC SAFE against any loss, cost, damage or liability by reason of CONTRACTOR’s violation of this provision.

4. Subconsultants

MTC SAFE approval in writing is required prior to any disclosure by CONTRACTOR of PII to a subconsultant or prior to any work being done by a subconsultant that entails receipt of PII. Once approved, CONTRACTOR agrees to require such subconsultant to sign an agreement in substantially identical terms as this attachment, binding the subconsultant to comply with its provisions.

5. Contractor Guarantees

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

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

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

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

6. Notice of Security Breach

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

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

ATTACHMENT G
Subcontractor List

	<u>Name/Address of Subcontractor</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 H

Federally Required Clauses

1. EQUAL EMPLOYMENT OPPORTUNITY

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and 49 U.S.C. § 5332 for FTA-funded projects CONTRACTOR 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, CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. CONTRACTOR shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by CONTRACTOR 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.

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

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

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

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

2.2. Prompt Payment of Funds Withheld to Subcontractors

A. In the event that MTC SAFE withholds a portion of the payment from CONTRACTOR as retainage, CONTRACTOR, 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 CONTRACTOR and subconsultants.

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

2.3. DBE Records

A. CONTRACTOR 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 H-4, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), attached hereto and incorporated herein by this reference, certified correct by CONTRACTOR or CONTRACTOR'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 CONTRACTOR when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to the Contract Manager.

2.4. DBE Certification and Decertification Status

If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify CONTRACTOR in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify CONTRACTOR 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

CONTRACTOR 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

CONTRACTOR 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

CONTRACTOR 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

CONTRACTOR 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

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

8. LICENSE FOR FEDERAL GOVERNMENT PURPOSES

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

CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR's audits, if any, performed during the course of Project development and at Project completion shall be forwarded to MTC SAFE no later than one hundred eighty (180) days after fiscal year end close.

11. AUDITS

CONTRACTOR further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that MTC SAFE, 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.

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

CONTRACTOR further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subcontractor agrees that MTC SAFE the U.S. DOT, FTA or FHWA, as applicable, the Comptroller General of the United States, the State of California, and their authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor for the term specified above.

12. FLY AMERICA REQUIREMENTS.

CONTRACTOR 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.

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

13. ENERGY CONSERVATION.

CONTRACTOR 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. CONTRACTOR 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, CONTRACTOR 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 Contractor 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 CONTRACTOR to the extent the Federal Government deems appropriate.
- b. CONTRACTOR 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 CONTRACTOR, to the extent the Federal Government deems appropriate.

- c. CONTRACTOR 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

CONTRACTOR 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

CONTRACTOR 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

CONTRACTOR 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.

INSTRUCTIONS - LOCAL AGENCY CONTRACTOR DBE COMMITMENT

Contractor Section

The Contractor 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. **Contractor 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 contractor'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 contractors. Also, enter the prime contractor'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 contractors should notify the prime contractor 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 contractor 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 contractor'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 contractor.
13. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the contractor.
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 contractor.

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 Contractor 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.

INSTRUCTIONS - LOCAL AGENCY CONSULTANT DBE INFORMATION

Contractor Section

Contractor 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 contractor.
5. **Contractor Name** - Enter the contractor'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 contractors. SUM = (DBE's + all Non-DBE's). Do **not** include the prime contractor information in this count.
8. **Total number of all subcontractors** – Enter the total number of all subcontracted contractors. SUM = (DBE's + all Non-DBE's). Do **not** include the prime contractor 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 contractor'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 contractors. Also, enter the prime contractor'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 contractors should notify the prime contractor 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 contractor 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 contractor'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 contractor.
17. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the contractor.
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 contractor.

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 Contractor 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.

Contractor must submit form with their invoice on a monthly basis

ATTACHMENT H-3

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

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

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

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

ATTACHMENT H-4, Final Report-Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts Form
Local Assistance Procedures Manual
EXHIBIT 17-F Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES
(DBE), FIRST-TIER SUBCONTRACTORS

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

CEM-2402F (REV 02/2008)

CONTRACT NUMBER		COUNTY	ROUTE	POST MILES	FEDERAL AID PROJECT NO.	ADMINISTERING AGENCY	CONTRACT COMPLETION DATE
PRIME CONTRACTOR			BUSINESS ADDRESS			ESTIMATED CONTRACT AMOUNT \$	
ITEM NO.	DESCRIPTION OF WORK PERFORMED AND MATERIAL PROVIDED	COMPANY NAME AND BUSINESS ADDRESS	DBE CERT. NUMBER	CONTRACT PAYMENTS		DATE WORK COMPLETE	DATE OF FINAL PAYMENT
				NON-DBE	DBE		
				\$	\$		
				\$	\$		
				\$	\$		
				\$	\$		
				\$	\$		
				\$	\$		
				\$	\$		
				\$	\$		
				\$	\$		
				\$	\$		
				\$	\$		
				\$	\$		
				\$	\$		
				\$	\$		
				\$	\$		
				\$	\$		
ORIGINAL COMMITMENT \$			TOTAL	\$	\$		
DBE							
List all First-Tier Subcontractors, Disadvantaged Business Enterprises (DBEs) regardless of tier, whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that approved at time of award, provide comments on back of form. List actual amount paid to each entity.							

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT

CONTRACTOR REPRESENTATIVE'S SIGNATURE		BUSINESS PHONE NUMBER	DATE
TO THE BEST OF MY INFORMATION AND BELIEF, THE ABOVE INFORMATION IS COMPLETE AND CORRECT			
RESIDENT ENGINEER'S SIGNATURE		BUSINESS PHONE NUMBER	DATE

Copy Distribution-Caltrans contracts: **Original** - District Construction **Copy**- Business Enterprise Program **Copy**- Contractor **Copy** Resident Engineer

Copy Distribution-Local Agency contracts: **Original** - District Local Assistance Engineer (submitted with the Report of Expenditure) **Copy**- District Local Assistance Engineer **Copy**- Local Agency file

**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:

DBE Program Status	Column to be used
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 I
State Required Clauses

ATTACHMENT I-1

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR, 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 CONTRACTOR'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. CONTRACTOR shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.
4. CONTRACTOR 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 CONTRACTOR was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that CONTRACTOR 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 CONTRACTOR and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to CONTRACTOR, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure CONTRACTOR's breach of this Agreement.

ATTACHMENT I-2

NONDISCRIMINATION ASSURANCES

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

1. That CONTRACTOR 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 CONTRACTOR 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: CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR retains ownership or possession of the property.

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

APPENDIX A TO ATTACHMENT I-2

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

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

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

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

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

APPENDIX B TO ATTACHMENT I-2

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

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, its successors and assigns.

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

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become

the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.*

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

APPENDIX C TO ATTACHMENT I-2

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

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

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

That in the event of breach of any of the above nondiscrimination covenants, CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR and its assigns.

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

APPENDIX D TO ATTACHMENT I-2

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

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

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

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

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

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

That in the event of breach of any of the above nondiscrimination covenants, CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR, and its assigns.

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

ATTACHMENT I-3, STATE DEPARTMENT OF TRANSPORTATION REQUIREMENTS

Caltrans Non – Discrimination

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

D. CONTRACTOR 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 CONTRACTOR.

E. CONTRACTOR 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. Contractor 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-VIII or better.

Yes (√)	Please certify by checking the box below that required coverages will be provided within ten (10) days of MTC SAFE's notice to firm that it wishes to contract with the firm.
—	<p><u>Workers' Compensation Insurance</u> 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 CONTRACTOR's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC SAFE. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONTRACTOR is a sole proprietor or a corporation with stock 100% owned by officers with no employees.</p>
—	<p><u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of CONTRACTOR and CONTRACTOR'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 SAFE.</p> <p>MTC SAFE, Caltrans, and California Highway Patrol (CHP) 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 CONTRACTOR's operations.</p>
—	<p><u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by CONTRACTOR and CONTRACTOR'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.</p>
—	<p><u>Umbrella Insurance</u> in the amount of \$4,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.</p>
—	<p><u>Errors and Omissions Professional Liability Insurance</u> for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$5,000,000 per claim, that includes an endorsement for Contingent</p>

	<p>Bodily Injury and Property Damage. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.</p> <p>The policy shall provide coverage for all work performed by CONTRACTOR and any work performed or conducted by any subcontractor/contractor working for or performing services on behalf of the CONTRACTOR. No contract or agreement between CONTRACTOR and any subcontractor/consultant shall relieve CONTRACTOR of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONTRACTOR and any subcontractor/consultant working on behalf of CONTRACTOR on the project.</p>
--	--

	<p><u>Property Insurance.</u> Property Insurance covering CONTRACTOR'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 SAFE (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 SAFE.</p>
--	--

MTC SAFE, Caltrans, and CHP, 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 Contractor's operations.

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

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

Contractor shall be responsible for payment of any deductible or retention on Contractor's policies without right of contribution from MTC SAFE. 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 SAFE seeks coverage as an additional insured under any Contractor insurance policy that contains a deductible or self-insured retention, Contractor 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 Contractor, subconsultant, subcontractor, or any of their employees, officers or directors, even if Contractor or subconsultant is not a named defendant in the lawsuit.

If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Contractor 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, Contractor shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the work.

All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Contractor’s personnel, subcontractors, and equipment have been removed from MTC SAFE’s property, and the work or services have been formally accepted. Contractor must notify MTC SAFE 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.

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

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

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 SAFE’s notice to firm that it wishes to contract with the firm.

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

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

APPENDIX E, Not Used

APPENDIX F, FEDERAL REQUIREMENTS

Federally-required contract provisions are listed below and in *Appendix C, MTC SAFE's Standard Contractor Agreement*, in Attachment H and its subparts. In addition, the federal requirements in this *Appendix F* shall apply to any contract resulting from this RFP. 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 SAFE has established Disadvantaged Business Enterprise (DBE) goal of 3% for any contract entered into as a result of this RFP.

1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

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

3. SUBMISSION OF DBE INFORMATION

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

participation will be counted towards the contract goal, and all DBE participation shall be collected and reported.

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

4. DBE PARTICIPATION GENERAL INFORMATION

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

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

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

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

Instructions for Certification:

1. By signing and submitting this 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 SAFE may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to MTC SAFE 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 SAFE 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 SAFE.
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 Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which does a prudent person in the ordinary course of business dealings normally possess.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, MTC SAFE 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 proposal, that neither it nor its “principals” [as defined at 49 CFR Section 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date

(signature of authorized official)

(type/print name and title)

APPENDIX F-2, CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____ hereby certify on behalf of _____ that:
(name and title of grantee official) (name of grantee)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 2013.

By:

(signature of authorized official)

(title of authorized official)

APPENDIX F-3, LOCAL AGENCY CONTRACTOR DBE COMMITMENT
(Inclusive of all DBEs at time of proposal)

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

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

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

INSTRUCTIONS - LOCAL AGENCY CONTRACTOR DBE COMMITMENT

Contractor Section

The Contractor shall:

24. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
25. **Project Location** - Enter the project location as it appears on the project advertisement.
26. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc)..
27. **Contractor Name** - Enter the contractor's firm name.
28. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-I form. See LAPM Chapter 10.
29. **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 contractor'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.
30. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted contractors. Also, enter the prime contractor's name and telephone number, if the prime is a DBE.
31. **DBE Cert. Number** - Enter the DBEs Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted contractors should notify the prime contractor in writing with the date of the decertification if their status should change during the course of the contract.)
32. **DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime contractor if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
33. **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.
34. **Preparer's Signature** – The person completing this section of the form for the contractor's firm must sign their name.
35. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the contractor.
36. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the contractor.
37. **Date** - Enter the date this section of the form is signed by the preparer.
38. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the contractor.

Local Agency Section:

The Local Agency representative shall:

39. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
40. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
41. **Contract Execution Date** - Enter the date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
42. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
43. **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 Contractor Section of this form is complete and accurate.
44. **Date** - Enter the date the Local Agency Representative signs the form.
45. **Local Agency Representative Title** - Enter the position/title of the person signing this section of the form.
46. **(Area Code) Tel. No.** - Enter the area code and telephone number of the Local Agency representative signing this section of the form.

INSTRUCTIONS - LOCAL AGENCY CONSULTANT DBE INFORMATION

Contractor Section

The Contractor shall:

31. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
32. **Project Location** - Enter the project location as it appears on the project advertisement.
33. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
34. **Total Contract Award Amount** - Enter the total contract award dollar amount for the prime contractor.
35. **Contractor Name** - Enter the contractor's firm name.
36. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-I form. See LAPM Chapter 10.
37. **Total Dollar Amount for all Subcontractors** – Enter the total dollar amount for all subcontracted contractors. SUM = (DBE's + all Non-DBE's). Do **not** include the prime contractor information in this count.
38. **Total number of all subcontractors** – Enter the total number of all subcontracted contractors. SUM = (DBE's + all Non-DBE's). Do **not** include the prime contractor information in this count.
39. **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 contractor'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.
40. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted contractors. Also, enter the prime contractor's name and telephone number, if the prime is a DBE.
41. **DBE Cert. Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted contractors should notify the prime contractor in writing with the date of the decertification if their status should change during the course of the contract.)
42. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime contractor 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.
43. **Total Dollars Claimed** – Enter the total dollar amounts for columns 12 and 13.
44. **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.
45. **Preparer's Signature** – The person completing this section of the form for the contractor's firm must sign their name.
46. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the contractor.
47. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the contractor.
48. **Date** - Enter the date this section of the form is signed by the preparer.
49. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the contractor.

Local Agency Section:

The Local Agency representative shall:

50. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
51. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
52. **Contract Execution Date** - Enter the date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
53. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
54. **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 Contractor Section of this form is complete and accurate.
55. **Date** - Enter the date the Local Agency Representative signs the form.
56. **Local Agency Representative Title** - Enter the position/title of the person signing this section of the form.
57. **(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:

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

APPENDIX F-5, DBE INFORMATION – GOOD FAITH EFFORTS

Federal-aid Project No. _____ Bid Opening Date _____

The Metropolitan Transportation Commission Service Authority for Freeways and Expressways (MTC SAFE) established a Disadvantaged Business Enterprise (DBE) goal of 3% for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the “Local Agency Bidder DBE Commitment” form indicates that the bidder has met the DBE goal. This will protect the bidder’s eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the “Local Agency Bidder DBE Commitment” form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled “Submission of DBE Commitment” of the Special Provisions:

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

Publications:

Date of Advertisement:

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

Names of DBEs Solicited:

Date of Initial Solicitation:

Follow Up Methods and Dates:

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

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

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

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

- E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs:

- F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization:	Method/Date of Contact:	Results:
------------------------------	-------------------------	----------

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

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

APPENDIX G, 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 SAFE 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.

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

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