



METROPOLITAN
TRANSPORTATION
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Executive Director

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Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

December 16, 2013

**REQUEST FOR QUALIFICATIONS
AUDITING, ATTESTATION, AND CONSULTING SERVICES**

Dear Auditor:

The Metropolitan Transportation Commission (MTC) invites your firm to submit a Statement of Qualifications (SOQ) to provide assurance, audit and consulting services for MTC, the Metropolitan Transportation Commission Service Authority for Freeways and Expressways (MTC SAFE), Bay Area Toll Authority (BATA), Bay Area Infrastructure Financing Authority (BAIFA), and Bay Area Headquarters Authority (BAHA). MTC intends to select one or more audit firms to provide assurance, audit and consulting services. These services include but are not limited to closeout audits on completed state grants, pre-award and interim audits for selected contracts, and agreed upon procedures and consulting. The initial term of the resulting contract is for five (5) years; however, MTC may elect to extend the resulting contract for two (2) consecutive one-year options for a total up to seven (7) years.

This letter together with its enclosures comprises the Request for Qualifications (RFQ) for this project. You may download a copy of the RFQ and additional available reference material from MTC's website at <http://procurements.mtc.ca.gov/>. Responses should be submitted according to the instructions set forth in this RFQ.

I. SOQ Due Date

Interested firms must submit an original and six (6) hard copies of their SOQs by **4:00 p.m. (PST) on January 31, 2014**. SOQs received after that date and time will not be considered. SOQs shall be considered firm offers to enter into a contract and provide the services described for a period of one hundred eighty (180) days from the date of submittal.

II. MTC Point of Contact

SOQs and all inquiries relating to this RFQ should be submitted to the address shown below. For telephone inquiries, call (510) 817-5958. E-mail inquiries may be directed to: datmaja@mtc.ca.gov.

Debbie Atmaja, Project Manager
MTC

Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
Fax: (510) 817-5957

Thank you for your participation.

Sincerely yours,



Steve Heminger
Executive Director

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RFQ final.doc

REQUEST FOR QUALIFICATIONS

to the

METROPOLITAN TRANSPORTATION COMMISSION

for

AUDITING, ATTESTATION, AND CONSULTING SERVICES

December 16, 2013

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

I. BACKGROUND

The Metropolitan Transportation Commission (MTC) was established under the laws of the State of California in Government Code Section 66500 *et seq.* in 1970 to provide comprehensive regional transportation planning for the nine counties that comprise the San Francisco Bay Area, including the City and County of San Francisco and the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano and Sonoma.

MTC's principal sources of revenue to fund its governmental operations include state grants, a percentage of the sales tax revenues collected in the nine Bay Area counties under the State Transportation Development Act of 1971 (TDA) and grants from the U.S. Department of Transportation, Office of the Secretary of Transportation (U.S. DOT), including the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), and funds from other federal, state and local agencies.

MTC Service Authority for Freeways and Expressways (MTC SAFE), established pursuant to California Streets and Highways Code Sections 2555 *et seq.*, in partnership with the California Highway Patrol (CHP) and the California Department of Transportation (Caltrans), oversees the installation and operation of call boxes along Bay Area freeways and administers a roving tow truck service to quickly clear incidents from the region's most congested roadways.

The Bay Area Toll Authority (BATA) is a public agency created by Senate Bill 226 effective January 1, 1998. Senate Bill 226 amended Streets and Highway Code Section 30950 *et seq.* and transferred to BATA certain duties and responsibilities from the California Transportation Commission (CTC) and Caltrans for the disposition of toll revenues collected from toll bridges owned and operated by Caltrans in the Bay Area. These responsibilities include administration of the Regional Measure 1 (RM1) capital improvement program approved by the voters in 1988 and the allocation of Regional Measure 2 (RM2) capital and operating funds for congestion relief programs approved by voters in 2004.

On July 18, 2005, the California State Legislature approved Assembly Bill (AB) 144 transferring toll bridge administration responsibilities from Caltrans to BATA. The legislation also consolidated the seismic retrofit dollar previously administered by Caltrans along with all other toll bridge revenues under BATA's administration. AB 144 created the Toll Bridge Project Oversight Committee consisting of member from Caltrans, BATA and CTC to provide oversight of the state toll bridge Seismic Retrofit Program.

Bay Area Infrastructure Financing Authority (BAIFA) is a public entity created under and pursuant to the Joint Powers Act consisting of Section 6500 *et seq.* of the California Government Code. The purpose of BAIFA is to exercise the joint powers common to MTC and BATA and the powers separately conferred by law upon BAIFA to plan capital projects and obtain funding in forms of grants, contributions, appropriations, loans and other assistance from the United States and State of California and apply funds received to pay debt service on bonds issued by the BAIFA to finance or refinance public capital improvements projects.

Bay Area Headquarters Authority (BAHA) was established in September 2011 pursuant to the California Joint Exercise of Powers Act, consisting of Section 6500 *et seq.* of the California Government Code, which authorizes BAHA to exercise powers common to MTC and BATA and the powers separately conferred by law on BAHA. BAHA is authorized to plan, acquire, develop and operate directly or through contract BAHA's office space and facilities. On

October 14, 2011, BAHA acquired property located on 375 Beale Street, San Francisco, California for the purpose of establishing a Bay Area Regional Headquarters for MTC, the Bay Area Air Quality Management District, and the Association of Bay Area Governments.

II. MINIMUM QUALIFICATIONS

To be eligible to provide services under this RFQ, a firm must submit an SOQ that demonstrates that the firm meets the following minimum qualifications (the “Minimum Qualifications”):

- **Independence:** The firm must provide an affirmative statement that it is independent of MTC, MTC SAFE, BATA, BAIFA, and BAHA as defined by generally accepted auditing standards and the standards applicable to financial audits as contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.
- **License to Practice in the State of California:** An affirmative statement is required attesting that the firm and all assigned key professional staff are properly registered and licensed to practice in the State of California.
- **Experience:** An affirmative statement is required indicating the firm’s experience conducting audits of compliance in accordance with generally accepted auditing standards; the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.
- The firm must have experience with government agencies, at least one of which must be a transportation agency, for whom it has provided assurance, auditing, and consulting services similar to those covered by this RFQ,.
- **Schedule:** The firm must provide an affirmative statement that it will be able to devote the necessary resources to complete the work described in *Appendix A, Scope of Work*. The audits or consulting services may occur at any time during the year and there may be more than one project to complete simultaneously.
- The Proposer must have a local office with staffing within the nine-county San Francisco Bay Area.

Other Qualifications

In addition to the above Minimum Qualifications, familiarity with or expertise in the following areas is desirable, and will be considered in the evaluation of proposals.

- Recent experience in performing compliance audits as required by the U.S. Office of Management and Budget (OMB) Circular A-133 *Compliance Supplement*, and certain provisions of the TDA, including Public Utilities Code Section 99245 as enacted and amended by statute.
- Current experience in electronic payments, security (IT, PII), and internal control reviews.

III. SCOPE OF WORK, SCHEDULE AND BUDGET

A. Scope of Work

MTC expects to select one or more auditors to provide assurance, auditing, and consulting services under this RFQ. *Appendix A, Scope of Work*, outlines the process to define the services to be performed by the selected auditor or auditors. If more than one firm is selected, MTC will assign each project to one of the selected firms based on MTC's needs, firm expertise, and staff availability. MTC makes no representation as to a specific project assignment plan. Selection of a firm to provide assurance, auditing and consulting services does not guarantee a firm will be assigned any projects.

Individual project assignments will be added to the bare contract by Audit Order and then agreed to by engagement letter. Each project is expected to be completed by the terms of a specific engagement letter. The actual number of project assignments will be determined by MTC in its sole discretion.

B. Period of Performance

MTC intends to enter into a contract with each selected firm for an initial term of July 1, 2014 through June 30, 2019. At MTC's sole option, each contract may be renewed for up to two (2) additional one-year options for a total up to seven (7) years. Continuation is subject to an annual review and recommendation, the satisfactory negotiation of terms, the concurrence of MTC's Administration Committee, and the annual allocation of funds.

C. Project Budget

The estimated total budget for the initial five-year term of the contract(s) is three hundred thousand dollars (\$300,000). Additional amounts for future option years will be subject to approval of future MTC budgets allocating such funds. Each firm selected through this RFQ to audit third parties will be paid directly by MTC, MTC SAFE, BATA, BAIFA or BAHA. Federal funds may be used for one or more contracts; accordingly, firms must be willing to accept federal contracting terms and conditions in *Appendices C and D* included in this RFQ.

IV. PROPOSERS' CONFERENCE, REQUESTS FOR CLARIFICATION OR EXCEPTIONS, AND ADDENDA

A proposers' conference will be held to review the RFQ at **1:00 p.m. (PST), on Tuesday, January 14, 2014** at the Joseph P. Bort MetroCenter Building, 101 8th Street, Oakland, CA in the Fishbowl Conference Room. Please arrive by the start time listed. Attendance at the conference is not mandatory for proposers.

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

Any requests for clarification, or questions regarding RFQ requirements, or requests for exceptions to or modifications of RFQ provisions must be received by MTC no later than 4:00 p.m. (PST) on Friday, January 17, 2014, to guarantee response or consideration. MTC reserves the right to disqualify firms whose SOQs contain unauthorized conditions or exceptions.

V. AUDITOR SELECTION TIMETABLE*
(all times are PST)

1:00 p.m., Tuesday, January 14, 2014	Proposers' conference to be held at MTC offices at 101 8 th Street, Oakland, CA in the Fishbowl Conference Room
4:00 p.m., Friday, January 17, 2014	Closing date/time for receipt of requests for clarification/exceptions
No later than five (5) working days prior to the date SOQs are due.	Deadline for protesting RFQ provisions
4:00 p.m., Friday, January 31, 2014	Closing date/time for receipt of SOQs
Week of February 10, 2014 (approximate)	Interviews (if held)
Wednesday, March 12, 2014	Administration Committee Approval
March 31, 2014 (approximate)	Execution of Contract(s)

*Dates are approximate and are subject to change.

VI. 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 disadvantaged business enterprise (DBE) utilization requirements on its consultants and contractors. A firm's DBE participation under its contract with MTC will assist Caltrans in meeting its federally-mandated statewide overall DBE goal.

MTC will establish DBE goals for each Audit Order issued under any contract entered into as a result of this RFQ. **Federally-required forms related to DBE goals will be required at the time those Audit Orders under any contract are entered, not at the time of SOQs are submitted.**

VI. FORM OF SOQ

SOQ content and completeness are most important to the overall evaluation. Clarity is essential and will be considered in assessing the proposer's capabilities. Proposers are asked to print on both sides of each page and encouraged to use recycled paper. Each SOQ must include the following:

A. Transmittal Letter

SOQ must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm, including the name, email address, and telephone number of a contact person, if different from the signatory. The letter should acknowledge receipt of this RFQ and any addendum to this RFQ and indicate that the SOQ is a firm offer to enter into a contract to perform work related to this RFQ for a period of one hundred eighty (180) days from SOQ submission. Provide an affirmative statement attesting to the fact that firm meets all the Minimum Qualifications listed in the first paragraph of Section II.

B. Title Page

SOQ must include a title page that includes the RFQ subject; the name, local address, and telephone number of the proposing firm; the name, telephone number, and email address of contact person; and the date.

C. Table of Contents

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

D. Qualifications and Experience

1. A statement of the firm's history, the number of regular professional employees, the size of the firm's governmental audit staff, and the location of the office from which the work of this engagement is to be performed.
2. A description of the firm's experience with agreed upon procedure engagements including review of project close-out audit, pre-award and interim audits, and contract compliance audit.
3. Describe a minimum of three (3) examples of the firm's past assignments performed for government agencies, including the name of the client and a contact person including telephone number and email address.
4. Indicate the percentage of government audits performed by the firm in comparison to the firm's overall revenue.
5. A description of the firm's audit policy.
6. A description of the firm's experience with SSAE No. 16 audits of third-party providers and the type(s) of SSAE No. 16 reports.

7. Familiarity with or expertise in the areas describe in the supplemental qualifications in this RFQ. Please describe in detail:
 - Relevant experience performing compliance audits as required by the U.S. Office of Management (OMB) Circular A-133 *Compliance Supplement*.
 - Experience with provisions of the Transportation Development Act, including Public Utilities Code Section 99245 as enacted and amended by statute.
 - Relevant experience with electronic payments, security (IT, PII), and internal control reviews.
8. A copy of a report on its most recent external quality control review (peer review), with a statement whether that quality control review includes a review of specific government engagements.
9. Describe any situation for which the firm has recently withdrawn from an audit engagement.

E. Staffing and Personnel

1. Provide a detailed statement of the qualifications and relevant experience of the team members that demonstrates that the firm possesses the Minimum Qualifications described in Section VI. in this RFQ. This section should include the number and nature of the professional staff to be employed in this engagement on a full-time basis, and the number and nature of other staff to be employed on this project on a full-time or part-time basis.

The resumes of the firm's principals and individuals likely to work on projects in the areas covered by this RFQ should be attached as an exhibit. If the proposer is a joint venture or consortium, the qualifications of each firm comprising the joint venture or consortium should be separately identified, and the firm that is to serve as the principal auditor should be noted.
2. Indicate how the quality and consistency of staff over the term of the agreement will be assured. (Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with prior written permission of MTC. However in either case, MTC retains the right to approve or reject replacements.)
3. Provide information on the circumstances and status of any disciplinary action taken or pending against any member working on the engagement audit.

F. Form and Certifications

- A signed California Levine Act statement (*Appendix B*)
- A signed Insurance Provisions document (*Appendix E*)
- A signed Certification Regarding Debarment, Suspension, and Other Responsibility Matters (*Appendix D-1*)
- A signed Certification of Restriction on Lobbying (*Appendix D-2*)

G. Cost Proposal

IN A SEPARATE SEALED ENVELOPE: A description of the auditor's hourly rates for those individuals identified under Item E.1 above, any anticipated travel costs, and all other charges, if any, that would be passed on to MTC in projects of this nature. Fully loaded hourly rates should include all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, materials and supplies. Firms' hourly rates will not be a factor in the evaluation. However, MTC reserves the right to negotiate with or to decline to enter into contracts with a firm(s) whose rates are unreasonable in MTC's sole discretion.

VII. SOQ EVALUATION

A. Verification of Minimum Qualifications

The Project Manager, in consultation with the Office of General Counsel, will review SOQs to ensure that each SOQ meets all of the Minimum Qualification requirements set forth in the first paragraph of Section II, Minimum Qualifications, of this RFQ. Proposers failing to demonstrate that they meet the Minimum Qualifications will not be considered.

B. Review for General Responsiveness

The Project Manager will conduct an initial review of the SOQs for general responsiveness. Any SOQ that does not include enough information to permit the evaluators to rate the SOQ in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. MTC reserves the right to request additional information from responsive proposers at any time during the evaluation process. An SOQ that fails to include one or more items requested in Section VI, Form of SOQ, may be considered complete and generally responsive, if evaluation in every criterion is possible.

C. Evaluation Criteria

Responsive SOQs will then be evaluated on the basis of the following evaluation criteria, in descending order of relative importance:

- Qualifications and experience of firm, principals, and key staff in performing attestation, audit and consulting services similar to those contemplated by this RFQ.
- Audit and consulting experience with government agencies, including transportation agencies.
- Ability to devote sufficient resources to multiple engagements throughout a year.
- Experience with SSAE No. 16 audits, OMB Circular A – 133 *Compliance Supplement* audits and TDA audits, if any.

The evaluation panel may award to one or more firms based on written proposals alone, or may develop a “short list” of firms that, in the opinion of the panel, are reasonably likely to be qualified for the project. Short-listed firms may be interviewed by the panel. MTC may contact the references of any and all proposers. The panel will then recommend to MTC’s Executive Director, or his designated representative, one or more firms to perform the required services. If the Executive Director agrees with the recommendation, he will forward it on to MTC’s Administration Committee for approval.

MTC reserves the right in its sole discretion to decide not to enter into a contract with any firm as a result of this RFQ, the right to accept or reject any and all proposals submitted, to adjust project timetables, to waive minor irregularities in proposals, and to request additional information from the proposers. Any award made will be made to the firm(s) whose proposal is the most advantageous to MTC, based on the evaluation criteria listed above.

Cost will not be a factor in the evaluation. However, MTC reserves the right, after the firm(s) have been ranked, to negotiate hourly rates with the firm(s) as well as to decline to enter into a contract with any firm whose rates and other costs are unreasonable, in MTC’s sole judgment.

MTC reserves the right to accept or reject any and all SOQs submitted, to waive minor irregularities in SOQs, and to request additional information from the firms. MTC reserves the right to award one or more contracts at the time the panel is approved. Placement on the list will not necessarily result in award of a contract.

VIII. GENERAL CONDITIONS

A. Limitations

This RFQ does not commit MTC to award a contract or to pay any costs incurred in the preparation of the SOQ.

B. Award

Any award made will be to the firm(s) whose SOQ is most advantageous to MTC based on the evaluation criteria outlined above. MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFQ.

C. Binding Offer

A signed SOQ submitted to MTC in response to this RFQ shall constitute a binding offer from the proposing firm to contract with MTC according to the terms of the SOQ for a period of one hundred eighty (180) days after its date of submission, which shall be the date SOQs are due to MTC.

D. Contract Arrangements

MTC’s Standard Professional Services Agreement is enclosed for your reference as *Appendix C*. If a proposer wishes to propose a change to any standard MTC contract provision, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of

requests for clarifications/exceptions listed above. If no such change is requested, the AUDITOR will be deemed to accept MTC's standard contract provisions.

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

E. Selection Disputes

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

1. No later than 4:00 p.m., five (5) working days prior to the date SOQ's are due, for objections to RFQ provisions; or
2. No later than 4:00 p.m. on the third working 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 working day after the date on which contract award is authorized by MTC or the date the Proposer is notified that it was not selected, whichever is later, for objections to AUDITOR selection.

Except with respect to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the MTC Executive Director authorizes award. Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the MTC review officer to recommend a resolution to the Executive Director. The MTC Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer.

Should a proposer wish to appeal the decision of the Executive Director, it may file a written appeal with the MTC Administration 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 Administration Committee's decision will be the final agency decision.

Authorization to award a contract to a particular firm by MTC shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to

the protest by the Executive Director, or if the decision of the Executive Director is appealed, the MTC Administration Committee's decision.

F. Public Records

This RFQ and any material submitted by a proposer in response to this RFQ are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt by law.

Other than proprietary information or other information exempt from disclosure by law, the content of SOQs submitted to MTC will be made available for inspection consistent with its policy regarding Public Records Act requests.

If the proposer believes any SOQ content contains trade secrets or other proprietary information that the proposer believes would cause substantial injury to the proposer's competitive position if disclosed, the proposer may request that MTC withhold from disclosure such proprietary materials by marking each page containing proprietary information 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 only, but understands that exemption from disclosure will be limited by MTC's obligations under the California Public Records Act. If an agreement is awarded to the proposer submitting this SOQ, MTC shall have the right to use or disclose the data, unless otherwise provided by law. [List pages].”

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

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

If the proposer does not mark each page containing proprietary information as confidential, does not include the statement described above at the front of its SOQ, and does not request that MTC

withhold information marked as confidential and requested under the California Public Records Act, MTC shall have no obligation to withhold the information from disclosure, and the proposer shall not have a right to make a claim or maintain any legal action against MTC or its commissioners, officers, employees or agents in connection with such disclosure.

G. Conflict of Interest

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

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

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

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

H. Personally Identifiable Information

The selected firm agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in *Attachment F, Special Conditions Relating to Personally-Identifiable Information to Appendix C.*

APPENDIX A

SCOPE OF WORK

The services to be performed by the selected firm or firms (herein, the “Auditor”) shall consist of services requested by the MTC Project Manager, or a designated representative including, but not limited to, the following:

1. General

The selected Auditor will be asked to provide a variety of assurance, auditing, and consulting services. Such services include, but are not limited to, closeout audits on completed state grants, compliance audits for costs incurred, pre-award audits for selected auditors, interim audits for various auditors, agreed upon procedures, and consulting.

2. Kick-Off Meeting

The selected Auditor will meet with MTC staff to discuss the engagement. The initial kick-off meeting will be held to discuss coordination and timing of the engagement. Each engagement will require a fully executed engagement letter authorized by MTC and Audit Order before proceeding with professional services.

3. Request for Services

The MTC Project Manager assigned to the specific engagement will initiate the service request. The selected Auditor shall provide MTC a draft engagement letter along with a not to exceed quote for each engagement.

4. Detailed Work Plan

Based on the information from the engagement letter and information from the MTC Project Manager or staff, the selected Auditor will provide a detailed work plan for each engagement and present it to the MTC Project Manager or staff.

5. On-Site Work

The selected Auditor and MTC Project Manager shall decide on where to perform the engagement. It may be performed at the MTC offices or at the Auditor offices. The MTC Project Manager for the specific engagement will be available to assist with information or answer questions.

6. Draft Report

After fieldwork is completed, the Auditor will, in consultation with the MTC Project Manager, prepare a draft report. All supplementary schedules should be included.

7. Exit Conference

The selected Auditor shall meet with the MTC Project Manager for the specific engagement to summarize the results of the on-site work and to review recommendations. In addition, the Auditor shall discuss the draft and answer questions.

8. Final copies of the Report

After the MTC Project Manager reviews and approves the report, the Auditor will draft the final copy of the report.

APPENDIX B
CALIFORNIA LEVINE ACT STATEMENT

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

MTC’s commissioners include:

Alicia C. 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 Wiener
Dorene Giacomini	Jake Mackenzie	Amy Rein Worth

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

YES NO

If yes, please identify the commissioner: _____

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

YES NO

If yes, please identify the commissioner: _____

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

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

APPENDIX C
MTC'S STANDARD PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

between

METROPOLITAN TRANSPORTATION COMMISSION

and

NAME OF AUDITOR

for

AUDITING, ATTESTATION AND CONSULTING SERVICES

FISCAL YEARS 201__-201__ to 201__-201__

PROFESSIONAL SERVICES AGREEMENT
Between METROPOLITAN TRANSPORTATION COMMISSION
And INSERT NAME OF AUDITOR
For AUDITING, ATTESTATION AND CONSULTING SERVICES

THIS AGREEMENT is made and entered into as of the xx day of Month, 20___, by and between the Metropolitan Transportation Commission (herein called "MTC"), a regional transportation planning agency established pursuant to California Government Code § 66500 and INSERT NAME OF AUDITOR, (herein called "AUDITOR"), a **PICK ONE OF THE FOLLOWING:** partnership, _____ [state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the State of _____.

RECITALS

WHEREAS, MTC intends to retain AUDITOR to provide auditing, attestation and consulting services (herein called the "Project"); and

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

AUDITOR's services are generally described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. Specific audit engagements shall be described initially in Audit Orders, in the form set forth in Attachment A-1, Sample Audit Order, attached hereto and incorporated herein by this reference and then agreed to by engagement letter specific to that Audit Order, signed by AUDITOR and MTC, a sample of which is included in the Agreement as Attachment A-2, Sample Engagement Letter. AUDITOR shall be responsible to perform or secure the performance of all services specified in signed engagement letter attached to each Audit Order in their entirety, within the maximum payment set forth in Audit Order.

Audit Orders and engagement letters may be approved by the MTC Chief Financial Officer or a designated representative.

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

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

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

1.1 PROGRESS REPORTS

AUDITOR shall provide MTC with progress reports when reasonably requested by MTC.

2. PERIOD OF PERFORMANCE

AUDITOR'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. AUDITOR's services shall be performed in accordance with the schedule included in each signed Audit Order.

3. COMPENSATION AND METHOD OF PAYMENT

Subject to duly executed amendments, MTC will pay AUDITOR for its services as described in duly executed Audit Orders, a total amount, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subcontractors costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee, not to exceed [**SPELL OUT AMOUNT IN WHOLE DOLLARS (\$_____)**] ("Maximum Payment"). MTC shall make payments to AUDITOR 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 as follows:

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

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

4. KEY PERSONNEL

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

5. AMENDMENTS

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

6. TERMINATION

A. Termination for Convenience. MTC may terminate this Agreement for convenience, in whole or in part, at any time by written notice to AUDITOR. Upon receipt of notice of termination, AUDITOR shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to MTC.

For terminated deliverables-based Audit Orders, AUDITOR shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, plus reasonable termination costs, not to exceed the amount payable for such deliverables. For terminated time-and-materials Audit Orders, AUDITOR shall be paid for hours worked, plus authorized expenses and reasonable termination costs, not to exceed the maximum amount payable under the terminated Audit Order. If AUDITOR has any property in its possession belonging to MTC, AUDITOR will account for the same, and dispose of it in the manner MTC directs. Except as provided above, MTC shall not in any manner be liable for AUDITOR's actual or projected lost profits had AUDITOR completed the services required by this Agreement.

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

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

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

AUDITOR 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

AUDITOR is an independent contractor and not an employee or agent of MTC and has no authority to contract or enter into any agreement in the name of MTC. AUDITOR has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by AUDITOR who are assisting in the performance of services under this Agreement. AUDITOR 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. AUDITOR 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, AUDITOR shall indemnify, keep and hold harmless MTC and those entities (if any) identified as additional insureds in Attachment E, Insurance and Financial Security (Bond) Provisions, and their commissioners, directors, officers, agents, and employees ("MTC Indemnified Parties") against any and all demands, claims, suits or actions arising out of any of the following:

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

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

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

10. DATA TO BE FURNISHED BY MTC

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

10.1 PERSONALLY IDENTIFIABLE INFORMATION

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

10.2 NONDISCLOSURE OF CONFIDENTIAL INFORMATION

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

AUDITOR 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. AUDITOR further agrees to disclose Confidential Information only to its directors, officers, employees and consultants who need to know such information, and who have agreed to be bound by the terms and conditions of this Agreement. Promptly upon the request of MTC, at any time and for any reason, AUDITOR shall destroy or return to MTC, at MTC's option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by MTC.

11. OWNERSHIP OF WORK PRODUCTS

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

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

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

12. SUBCONTRACTS

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

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

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

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

13. ASSIGNMENT OF AGREEMENT

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

14. RECORDS

AUDITOR 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. AUDITOR 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.

breach or violation of this warranty, MTC shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from AUDITOR's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

18. PROHIBITED INTERESTS

AUDITOR 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. AUDITOR further covenants that in the performance of the Agreement no person having any such interest shall be employed.

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

18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

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

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

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

19. LAWS AND REGULATIONS

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

20. CLAIMS OR DISPUTES

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

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

the amount of the potential claim.

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

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

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

21. REMEDIES FOR BREACH

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

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

22. TEMPORARY SUSPENSION OF WORK

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

If the suspension is due to AUDITOR'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

AUDITOR, all costs shall be at AUDITOR's expense and no schedule extensions will be provided by MTC.

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

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

23. WARRANTY OF SERVICES

A. In the performance of its services, AUDITOR represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of AUDITORS 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, AUDITOR shall provide such specific warranties as may be set forth in specific Audit Orders as agreed upon by the parties.

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

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

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

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

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

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

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

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

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

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

25. CHOICE OF LAW

All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of 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. AUDITOR 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 AUDITOR and MTC. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

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

METROPOLITAN TRANSPORTATION
COMMISSION

NAME OF AUDITOR

Steve Heminger, Executive Director

Insert Appropriate Name, Title

ATTACHMENT A

Scope Of Work

Outline of Services

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

- 1.
 - 2.
- ETC.

**ATTACHMENT A-1
SAMPLE AUDIT ORDER**

1.	Audit Order No.:	1, 2, etc.[insert]
2.	Auditor:	
3.	MTC Project Manager:	
4.	Start Date:	[insert]
5.	Completion Date:	[insert]
6.	Scope of Work:	[insert brief description of scope of work for Audit Order]
7.	Maximum Compensation:	\$ _____
8.	Deliverables-based Payment?	Yes No

9. Schedule and Compensation:

Initial Audit Phase	No. of Hours	Total Compensation	Personnel Assigned	Completion Date
Planning and risk assessment				
Fieldwork				
Draft audit report				
Final report				
Total				

METROPOLITAN TRANSPORTATION
COMMISSION

AUDITOR

Brian Mayhew, Chief Financial Officer

Name, Title

Date: _____

Date: _____

Insert MTC pathname

**ATTACHMENT A-2
SAMPLE ENGAGEMENT LETTER**

Date

Mr. Brian Mayhew, Chief Financial Officer
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607-4700

Dear Mr. Mayhew:

AUDITOR is pleased to present the Metropolitan Transportation Commission (MTC) this engagement letter outlining the agreed-upon procedures to perform _____.

This engagement to apply agreed-upon procedures will be performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our scope for this engagement will be limited to performing the agreed upon procedures at your direction and as stated in Attachment XX, attached hereto and incorporated herein by this reference.

Prior to commencing work on this engagement, we will meet with representatives of MTC to review the specified procedures and planned scope of our work. Upon completion of this engagement, we will provide MTC a report which will include a description of the procedures performed and associated results and findings, if any.

Dependent upon coordination with MTC and consultants, we anticipate that the work can be completed no more than XX months after contract execution. We will bill MTC for the actual hours incurred at stated hourly rates with a not to exceed amount of \$XX. The engagement letter may provide for lump sum deliverables-based payment, if agreed in the Audit Order. We will invoice monthly, with payment due within 30 days.

Mr. Brian Mayhew
Date
Page 2

If you concur with the scope and fees outlined in this proposal, please sign the acknowledgment below and return it to us. Should you have any questions or need additional information, please contact _____ at (###) ###-####. We are pleased to have the opportunity to submit this engagement letter and look forward to assisting MTC.

Very truly yours,

AUDITOR
By:

Name
Title

RESPONSE:

This letter correctly sets forth the understanding of the Metropolitan Transportation Commission.

By: _____
Title: _____
Date: _____

ATTACHMENT C

Compensation and Method of Payment

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

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

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

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

ATTACHMENT D
Key Personnel Assignments

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

ATTACHMENT E
Insurance and Financial Security (Bond) Provisions

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover AUDITOR's own liability and the liability arising out of work or services performed under this Agreement by any subAUDITORS, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that AUDITOR authorizes to work under this Agreement (hereinafter referred to as "Agents.") AUDITOR 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.

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

In the event AUDITOR 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 AUDITOR's insurance be primary without right of contribution from MTC. Prior to beginning work under this contract, AUDITOR 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 AUDITOR's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as AUDITOR 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 AUDITOR and AUDITOR's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single

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

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

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

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

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

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

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

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

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

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

In the event that MTC seeks coverage as an additional insured under any AUDITOR insurance policy that contains a deductible or self-insured retention, AUDITOR 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 AUDITOR, subconsultant, subcontractor, or any of their employees, officers or directors, even if AUDITOR 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, AUDITOR 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, AUDITOR 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 AUDITOR's personnel, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally accepted. AUDITOR must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, AUDITOR shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such

certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

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

2. FINANCIAL SECURITY (BONDS)

Not applicable.

3. ADDITIONAL INSUREDS

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

Metropolitan Transportation Commission Service Authority for Freeways and Expressways
Bay Area Toll Authority
Bay Area Infrastructure Financing Authority
Bay Area Headquarters Authority

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.

AUDITOR will have access to personally identifiable information (“PII”) in connection with the performance of the Agreement. PII is any information that is collected or maintained by MTC or AUDITOR that identifies or describes a person or can be directly linked to a specific individual, including that individual’s account. Examples of PII include name, address, phone or fax number, signature, date of birth, 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

AUDITOR shall permit MTC and its authorized representatives to audit and inspect: (i) AUDITOR’s facilities where PII is stored or maintained; (ii) any computerized systems used to share, disseminate or otherwise exchange PII; and (iii) AUDITOR’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 AUDITOR’s compliance with this Agreement, and all applicable laws.

2. General Confidentiality of Data

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

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

Notwithstanding anything to the contrary in Article 14. Records, of this Agreement, CONSULTANT agrees to retain PII for no longer than the term of the contract. At the conclusion of this retention period, CONSULTANT agrees to use Department of Defense (“DOD”) approved methods to wipe any files containing PII. Discarded data will be unavailable and unrecoverable following the purge on any electronic media including, but not limited to, magnetic disk, optical disk, magnetic tape, and memory. CONSULTANT agrees to destroy

hard-copy documents containing PII by means of a cross-cut shredding machine. CONSULTANT agrees to use DoD approved methods to sanitize any electronic media containing PII, including but not limited to magnetic disks, optical disks, magnetic tape, and memory prior to discarding a) after useful life has ended or b) at the conclusion of the Project, whichever comes first. Hard drives and computers shall be reformatted and reimaged in an equivalently secure fashion. At the conclusion of the performance period of this Agreement, CONSULTANT shall submit a certification to the MTC Project Manager as follows: "All PII whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in Section 2. General Confidentiality of Data of the Attachment F Special Conditions Relating to Personally Identifiable Information."

3. Compliance with Statutes and Regulations

AUDITOR 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, AUDITOR warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and MTC relating to the handling and confidentiality of PII and agrees to indemnify MTC against any loss, cost, damage or liability by reason of AUDITOR's violation of this provision.

4. Subconsultants

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

5. Consultant Guarantees

AUDITOR 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.

AUDITOR 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.

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

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

6. Notice of Security Breach

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

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

ATTACHMENT G
Subconsultant List

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

LIST "None" ABOVE IF NO SUBCONSULTANTS 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 AUDITOR 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, AUDITOR 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, AUDITOR 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. AUDITOR or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. AUDITOR shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by AUDITOR 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 Consultant and other DBE Subconsultants/Suppliers

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

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

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

2.2. Prompt Payment of Funds Withheld to Subcontractors

A. In the event that MTC withholds a portion of the payment from AUDITOR as retainage, AUDITOR, 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 AUDITOR 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. AUDITOR 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 AUDITOR or AUDITOR'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 AUDITOR 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 AUDITOR in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify AUDITOR 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

AUDITOR 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

AUDITOR 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

AUDITOR 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

AUDITOR 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

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

8. LICENSE FOR FEDERAL GOVERNMENT PURPOSES

FTA/FHWA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) the copyright in any work developed under this Agreement; and (b) any rights of copyright to which MTC or AUDITOR 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 Transit Administration, U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation."

10. RECORDS

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

11. AUDITS

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

AUDITOR agrees to grant MTC, the U.S. DOT, FTA, as applicable, the Comptroller General of the United States, the State of California, and their authorized representatives access to the AUDITOR'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. AUDITOR 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 AUDITOR agrees to reimburse MTC for those costs within sixty (60) days of written notification by MTC.

AUDITOR further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subcontractor agrees that MTC the U.S. DOT, 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.

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

13. ENERGY CONSERVATION.

AUDITOR 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. AUDITOR 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, AUDITOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on AUDITOR to the extent the Federal Government deems appropriate.
- B. AUDITOR 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 AUDITOR, to the extent the Federal Government deems appropriate.
- C. AUDITOR 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

AUDITOR 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

AUDITOR 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

AUDITOR 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 AUDITOR DBE COMMITMENT

Consultant Section

The Consultant shall:

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

Local Agency Section:

The Local Agency representative shall:

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

AUDITOR MUST FILL OUT & SIGN THIS PAGE (at contract execution)
ATTACHMENT H-2

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

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

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

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

INSTRUCTIONS - LOCAL AGENCY AUDITOR DBE INFORMATION

Consultant Section

Consultant shall:

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

Local Agency Section:

The Local Agency representative shall:

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

Caltrans Section:

Caltrans District Local Assistance Engineer (DLAE) shall:

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

AUDITOR 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: <i>highlight + F9 = math</i>	\$8.00	\$8.00			

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

**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, AUDITOR 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. AUDITOR 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. AUDITOR 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. AUDITOR, 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 AUDITOR'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. AUDITOR shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

4. AUDITOR 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 AUDITOR was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that AUDITOR 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 AUDITOR and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to AUDITOR, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure AUDITOR's breach of this Agreement.

ATTACHMENT I-2

NONDISCRIMINATION ASSURANCES

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

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

9. That AUDITOR 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 AUDITOR, 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 AUDITOR 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. AUDITOR 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. AUDITOR 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 AUDITOR by STATE, acting for the U.S. Department of Transportation, and is binding on AUDITOR, 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, AUDITOR, for itself, its assignees and successors in interest (hereinafter collectively referred to as AUDITOR) agrees as follows:

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

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

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

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

AUDITOR, 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 AUDITOR 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 AUDITOR, 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, AUDITOR 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, AUDITOR 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 AUDITOR 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 AUDITOR, 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, AUDITOR 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, AUDITOR 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 AUDITOR, 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, AUDITOR 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. AUDITOR 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. AUDITOR 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 AUDITOR'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. AUDITOR shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under this Agreement.

D. AUDITOR 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 AUDITOR.

E. AUDITOR 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
DEPARTMENT OF TRANSPORTATION REQUIREMENTS

APPENDIX D, DEPARTMENT OF TRANSPORTATION REQUIREMENTS

Disadvantaged Business Enterprise (DBE) Policy

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

MTC will establish Disadvantaged Business Enterprise (DBE) goals for each Audit Order issued under any contract entered into as a result of this RFQ.

1. TERMS AS USED IN THIS DOCUMENT

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

2. AUTHORITY AND RESPONSIBILITY

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

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on a Task Order issued under the contract, Appendix G-3, "Local Agency Proposer DBE Commitment (Consultant Contract)" (Exhibit 10-O1) form shall be submitted prior to Task Order finalization. In order for a Consultant to be considered responsible and responsive, the Consultant must make good faith efforts to meet the goal established for each Task Order. If the goal is not met, the Consultant must document adequate good faith efforts on Appendix G-5. All DBE participation will be counted towards the contract goal, and all DBE participation shall be collected and reported.

If there is a DBE goal on a Task Order issued under the contract, Appendix G-4, "Local Agency Proposer DBE Information (Consultant Contract)" (Exhibit 10-O2) form shall be submitted prior to Task Order finalization. The purpose of the form is to collect data required under 49 CFR 26. This form collects all DBE participation. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

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

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

5. RESOURCES

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

Click on the link in the left menu titled *Disadvantaged Business Enterprise*

Click on *Search for a DBE Firm* link

Click on *Access to the DBE Query Form* located on the first line in the center of the page

Searches can be performed by one or more criteria

Follow instructions on the screen

- C. How to Obtain a List of Certified DBEs without Internet Access:
DBE Directory - If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered from the Caltrans Publications Unit at (916) 263-0822, 1900 Royal Oaks Drive, Sacramento, CA 95815-3800.

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

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

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

Instructions for Certification:

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, MTC may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to MTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact MTC for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by MTC.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The

knowledge and information of a participant is not required to exceed that which does a prudent person in the ordinary course of business dealings normally possess.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, MTC may pursue available remedies including suspension and/or debarment.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION**

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its “principals” [as defined at 49 CFR Section 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

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

Date

(Signature of authorized official)

(Type/print name and title)

APPENDIX D-2, CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

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

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

Executed this _____ day of _____, 2013.

By _____
(signature of authorized official)

(title of authorized official)

INSTRUCTIONS - LOCAL AGENCY AUDITOR DBE COMMITMENT

Consultant Section

The Consultant 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. **Consultant Name** - Enter the consultant'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 consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
30. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
31. **DBE Cert. Number** - Enter the DBEs Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract.)
32. **DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
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 consultant'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 consultant.
36. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
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 consultant.

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 Consultant 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.

APPENDIX D-4, EXHIBIT 10-02: LOCAL AGENCY AUDITOR DBE INFORMATION
(Inclusive of all DBEs listed at contract execution)

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

Consultant to Complete this Section			
1. Local Agency Name: _____			
2. Project Location: _____			
3. Project Description: _____			
4. Total Contract Award Amount: \$ _____			
5. Consultant Name: _____			
6. Contract DBE Goal %: _____			
7. Total Dollar Amount for <u>all</u> Subcontractors: \$ _____			
8. Total Number of <u>all</u> Subcontractors: _____			
Award DBE Information			
9. Description of Services to be Provided	10. DBE Firm Contact Information	11. DBE Cert. Number	12. DBE Dollar Amount
Local Agency to Complete this Section		13. Total Dollars Claimed	12. DBE Dollar Amount
20. Local Agency Contract Number: _____		\$ _____	_____ %
21. Federal-aid Project Number: _____			
22. Contract Execution Date: _____			
Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate:			

23. Local Agency Representative Name (Print)			
24. Local Agency Representative Signature _____	25. Date _____		
26. Local Agency Representative Title _____	27. (Area Code) Tel. No. _____		
Caltrans to Complete this Section		15. Preparer's Signature	16. Preparer's Name (Print)
Caltrans District Local Assistance Engineer (DLAE) certifies that this form has been reviewed for completeness:		_____	_____
28. DLAE Name (Print) _____	29. DLAE Signature _____	17. Preparer's Title _____	18. Date _____
30. Date _____	19. (Area Code) Tel. No. _____		

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

INSTRUCTIONS - LOCAL AGENCY AUDITOR DBE INFORMATION

Consultant Section

The Consultant 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 consultant.
35. **Consultant Name** - Enter the consultant'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 consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
38. **Total number of all subcontractors** – Enter the total number of all subcontracted consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
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 consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
40. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
41. **DBE Cert. Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract.)
42. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE, and include DBEs that are not identified as subcontractors on the Exhibit 10-O1 form. See LAPM Chapter 9 for how to count full/partial participation.
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 consultant'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 consultant.
47. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
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 consultant.

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 Consultant 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 D-5, DBE INFORMATION – GOOD FAITH EFFORTS

Federal-aid Project No. _____ Bid Opening Date _____

The _____ established a Disadvantaged Business Enterprise (DBE) goal of _____% 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:
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H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

APPENDIX E

INSURANCE REQUIREMENTS

Minimum Insurance Coverages. Auditor 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'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 AUDITOR's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as AUDITOR 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 AUDITOR and AUDITOR's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC.</p> <p>MTC and its 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 AUDITOR's operations.</p>
—	<p><u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by AUDITOR and AUDITOR'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 \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.</p>
—	<p><u>Errors and Omissions Professional Liability Insurance</u> for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim. The policy shall provide coverage for all work performed by AUDITOR and any work performed or conducted by any subcontractor/auditor working for or performing services on behalf of the AUDITOR. No contract or agreement between AUDITOR and any subcontractor/auditor shall relieve AUDITOR of the responsibility for providing this Errors & Omissions or</p>

	Professional Liability coverage for all work performed by AUDITOR and any subcontractor/auditor working on behalf of AUDITOR on the project.
—	<u>Property Insurance.</u> Property Insurance covering AUDITOR’s own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

MTC and its 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 Auditor’s operations.

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

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

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

In the event that MTC seeks coverage as an additional insured under any Auditor insurance policy that contains a deductible or self-insured retention, Auditor 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 Auditor, subconsultant, subcontractor, or any of their employees, officers or directors, even if Auditor 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, Auditor 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, Auditor 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 Auditor’s personnel, subcontractors, and equipment have been removed from MTC’s property, and the work or services have been formally accepted. Auditor must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance

program will constitute a material breach of this Agreement.

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

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Auditor are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Auditor 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's notice to firm that it wishes to contract with the firm.

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

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

APPENDIX F
REQUESTS FOR EXCEPTIONS OR MODIFICATIONS

RFQ Section	<u>Relevant Provision</u>	<i>Requested Action</i>
	1.	
	2.	
	3.	
	4.	
	5.	
	6.	
	7.	
	8.	
	9.	
	10.	