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September 30, 2014

REQUEST FOR PROPOSAL (RFP)

Next Generation Clipper® System Consultant Support

NOTICE IS HEREBY GIVEN that the Metropolitan Transportation Commission (MTC) invites your firm to submit a proposal for consideration to provide consultant support to the Next Generation Clipper® System Project.

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

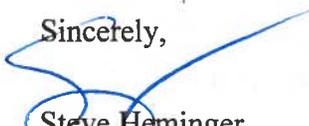
Interested firms must submit an original and ten (10) copies, as well as one electronic PDF version (provided on USB drive) of their proposal by **4:00 p.m., Thursday, October 30, 2014**, in accordance with the instructions contained in the RFP. Other key RFP dates are listed in Section V, Consultant Selection Timetable of the RFP.

Any contract entered into as a result of this RFP will be funded, in whole or in part, with federal funds, including funds that may have California State Department of Transportation requirements. Accordingly, the requirements included in Attachment H, Federal Requirements of Appendix D, MTC Standard Consultant Contract, and Appendices F through F-5 to this RFP shall apply to this procurement.

MTC Point of Contact
Derek Toups, Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
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Oakland, CA 94607-4700
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E-mail: dtoups@mtc.ca.gov

Thank you for your interest.

Sincerely,


Steve Heminger
Executive Director

SH: DT

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BAFO	Best and Final Offer
BAHA	Bay Area Headquarters Authority
BATA	Bay Area Toll Authority
Caltrans	State of California Department of Transportation
CDR	Critical Design Review
CDRL	Contract(s) Data Requirements List
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CLA	Customer Level Agreement
ConOps	Concept of Operations
Consultant(s)	The consulting firm/team selected as a result of this RFP which will carry out the Scope of Services Attachment A.
Contractor(s)	One or more vendors selected as a result of future procurement(s) to perform system integration, equipment supply, professional services, and/or other services for the delivery of the next-generation Clipper [®] system.
COSO	Committee of Sponsoring Organizations
DBE	Disadvantaged Business Enterprise
DBOM	Design, Build, Operate Maintain
EJ	Environmental Justice
EPS	Electronic Payment Systems
FAT	Factory Acceptance Testing
FDR	Final Design Review
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
FY	Fiscal Year (MTC's fiscal year runs 7/1 - 6/30)
G&A	General and Administrative (expense)
GAAP	Generally Accepted Accounting Principles
GASB	Governmental Accounting Standards Board
Green Book	Standards for Internal Control in the Federal Government
IFAS	Integrated Financial and Administrative Solution - the financial software system used by MTC.
ITS	Intelligent Transportation Systems
KPI	Key Performance Indicators
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MTC	Metropolitan Transportation Commission
MTC Project Manager	MTC staff member acting as primary point of contact for the Consultant, under the direction of MTC in consultation with the transit operators.
MTC-SAFE	MTC Service Authority for Freeways and Expressways
NEPA	National Environmental Policy Act
OEM	Original Equipment Manufacturer
PDR	Preliminary Design Review
POS	Point of Sale
Proposer	One or more firms submitting a single proposal in response to this RFP as an entity or team.
Q&A	Question(s) and Answer(s)
QA	Quality Assurance
QC	Quality Control
RFI	Request for Information
RFP	Request for Proposals
SEMP	Systems Engineering Management Plan (Caltrans)
SERF	Systems Engineering Review Form (Caltrans)
SLA	Service Level Agreement
SME	Subject Matter Expert
SOP	Standard Operating Procedure
Title VI	Title VI of the Civil Rights Act of 1964
TVM	Ticket Vending Machine
UGSC	Uniform Guidance of Super Circular
US DOT	United States Department of Transportation

I. MTC AND PROJECT DESCRIPTION

A. *Description of MTC*

The Metropolitan Transportation Commission (MTC) was created by the California Legislature in 1970 to plan the transportation network for the nine Bay Area counties. MTC functions as both the regional transportation planning agency – a state designation – and, for federal purposes, as the region's Metropolitan Planning Organization (MPO). MTC is the agency under the current, active contract with Cubic Transportation Systems, Inc. to design, build, operate and maintain the Clipper® fare payment system. MTC and the transit operators participating in Clipper® are working collaboratively on the design and procurement of the Project and will all work actively with the Contractor being procured through this RFP.

B. *Project Description*

Purpose and Need

The mission of the MTC Electronic Payments Section is to increase the efficiency of regional transportation by providing Bay Area travelers with convenient, standardized, customer-focused and cost-effective fare products and services to pay for bridge and express lane tolls, transit fares, and related transportation services, such as parking. The purpose of this Request for Proposals (RFP) is to select a qualified consultant firm/team to provide project management; procurement; implementation; and operations related consulting services for the next generation Clipper® regional fare payment system (hereafter “Project”).

Clipper®

Clipper® is the regional transit fare payment system for the nine-county San Francisco Bay Area. Transit riders can use a reloadable Clipper® card to pay fares on eight of the largest transit systems in the Bay Area: the Alameda-Contra Cost Transit District (AC Transit); the San Francisco Bay Area Rapid Transit District (BART); the City and County of San Francisco, acting by and through its Municipal Transportation Agency (“SFMTA”); the San Mateo County Transit District (“SamTrans”); the Santa Clara Valley Transportation Authority (“VTA”); the Peninsula Corridor Joint Powers Board (“Caltrain”); Golden Gate Bridge Highway and Transportation District (GGBHTD); and the Water Emergency Transportation Agency (San Francisco Bay Ferry).¹ These eight transit systems provide about 1.5 million transit rides on a typical weekday. The Clipper® fare payment system charges customers by deducting value from a Clipper® card in accordance with fare policies established by each transit operator. The system provides the associated revenue to each transit operator through an automated financial settlement process. As of July 2014, there were more than 1,400,000 active Clipper® card accounts, and the Clipper® system processed more than 700,000 transactions on a typical weekday (a transaction occurs when a customer pays a fare using a Clipper® card or adds value to a Clipper® card); generally, Clipper® handles about 45 percent of the fare payment transactions on the eight participating systems.

¹ To learn more about using Clipper on a specific transit provider, please visit <http://www.clippercard.com>.

The Clipper system includes more than 5,000 Clipper[®] fare payment devices (as well as other equipment types) currently in operation on the transit operators' fleets and platforms. The system includes a telephone customer service center; three in-person customer service centers; three web sites (clippercard.com; clipperdirectbenefits.com; and m.clippercard.com); a financial clearinghouse that distributes transit fare revenue to the participating transit systems; an equipment maintenance program; a pre-tax transit benefit program; and other services. Expansion of Clipper[®] is ongoing, with suburban bus and rail operators in Alameda, Contra Costa, Marin, Napa, Solano, and Sonoma counties due to launch Clipper[®] service by 2016.

MTC is the Clipper[®] Program Manager responsible for managing and administering the Clipper[®] program on behalf of and in coordination with the participating transit operators. MTC works in close partnership with the transit operators that accept Clipper[®] for fare payment, and MTC holds a Design-Build-Operate-Maintain (DBOM) contract with the current Clipper[®] contractor, Cubic Transportation Systems, Inc.

Next Generation Clipper[®]

In 2013, MTC and the transit operators began planning for the next-generation Clipper[®] fare payment system. The Project is being developed by MTC in partnership with more than 20 transit operators. The current Clipper[®] fare payment system was one of the first contactless transit payment systems implemented in the United States. The system design includes features and technologies that were considered innovative when they were first implemented, but that are now dated. While the system functions reliably and generally meets contractual performance requirements, the system design has technical shortcomings that affect both transit agencies and Clipper[®] cardholders.

MTC and transit operators that accept Clipper[®] are planning for a next-generation system that will ensure on-going operations and enhance customer convenience. Planning efforts completed to date have involved establishing a vision, goals and objectives for the next-generation system; researching industry best practices and lessons learned; evaluating the current cost of fare collection in the region; and coordinating fare policies aimed at simplifying regional fare coordination for riders and transit operators. MTC and participating transit operators are now working on formulating user needs and high-level system requirements for the next-generation system. This effort will conclude with the production of a System Description/Concept of Operations (ConOps) document, preliminary Procurement Strategy and Preliminary Transition Plan for the system later this year².

C. Project Overview

MTC is now seeking a Consultant to provide a multi-disciplinary team, preferably with experience in the procurement and implementation of complex federally funded electronic payment systems. The selected firm/team will provide advice and management services to support one or more procurement(s) of a transit fare payment system that meets the unique needs of the San Francisco Bay Area region, as well as MTC, state and federal requirements

² Documents developed to date and additional general Clipper[®] related program documents, including but not limited to Monthly Clipper[®] Project Updates; Clipper[®] Operating Statistics Reports; Clipper[®] MOU; C2 Mission/Vision/ Goals/Objectives; C2 Industry Analysis ; C2 Cost of Fare Collection Memo; C2 Public Input Plan; and February 2014 Draft C2 Concept of Operations, are available for Proposer review in a secure repository. To gain access to the repository, submit a request and valid email address to ClipperProcurements@mtc.ca.gov, using the subject header "Review Documents".

for a fair and competitive procurement process. The Consultant will advise MTC and the transit operators in the following areas: final system design; program administration; procurement strategy; transit payment service requirements; financial services; engineering and technology management; risk management; financing strategies; contract terms; and stakeholder and public communications. The Consultant will also directly support the procurement, design, prototyping, testing, installation, and, if needed, the monitoring of initial system performance against contractual requirements. The Consultant will be responsible for overseeing the selection of, and work performed by, the selected contractor(s) developing and operating the next-generation Clipper® system.

Areas of subject matter expertise the Consultant firm/team must possess to perform this work include, but are not limited to:

- Procurement strategy/development;
- Contract definition and service level/legal agreement design;
- Transit fare collection system engineering, operations and maintenance;
- Contracting, financing and risk allocation strategies/options;
- Contracting and supplier/vendor management strategies;
- Procurement project management;
- Transit payment service organization, process, and technology requirements;
- Technology and business process design/requirements; and
- Public involvement/outreach.

II. PROPOSER MINIMUM QUALIFICATIONS

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

- Proposer shall have completed at least one (1) similar project;
- The Proposer’s Project Manager shall have a minimum of ten (10) years of related experience; and
- Proposed task leads shall have a minimum of five (5) years of related experience.

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

A. Scope of Work

All work will be assigned pursuant to MTC-initiated task orders, which will include a specific scope of work based on the tasks identified in *Appendix A, Scope of Work*. Payment for work performed under task orders may be deliverables-based or time-and-materials-based, as determined by the MTC Project Manager. A sample task order form is attached hereto as Attachment A-2, Task Order Form to *Appendix D, MTC Standard Consultant Contract*.

B. Period of Performance

MTC expects the work to commence on or about March 1, 2015, and to be completed no later than June 30, 2020. After the initial term, at MTC's sole option, the contract may be extended for up to ten (10) additional years in increments of MTC's choosing, for work described in, related to the tasks described in, *Appendix A, Scope of Work*.

C. Budget

MTC has budgeted approximately four to five million dollars (\$4,000,000 - \$5,000,000) for this effort. Additional funding may be available in future Fiscal Years subject to approval of future MTC budgets.

IV. PROPOSERS' CONFERENCE AND REQUESTS FOR CLARIFICATION OR EXCEPTIONS

A Proposers' Conference will be held at 10:00 a.m. on October 8, 2014 at the Joseph P. Bort MetroCenter Building, 101 8th Street, Oakland, in the Fishbowl conference room.

Any Addenda to this RFP will be posted on MTC's website. All Proposers are responsible for checking the website for Addenda to this RFP.

Questions regarding this RFP (including questions asked orally of the Project Manager, or in the Proposer's Conference), as well as requests for clarification of or exceptions to RFP requirements must be received in writing via email to ClipperProcurements@mtc.ca.gov no later than 5:00 p.m., on October 24, 2014, to guarantee response or consideration. MTC reserves the right to reject any proposal that contains unauthorized conditions or exceptions.

V. CONSULTANT SELECTION TIMETABLE

10:00 a.m. on October 8, 2014	Proposers' Conference, at 101 8 th Street, Oakland, CA 94607, Fishbowl conference room
5:00 p.m. on October 24, 2014	Closing date/time for receipt of requests for modifications/exceptions
No later than three (3) working days prior to the date proposals are due.	Deadline for protesting RFP provisions
4:00 p.m., October 30, 2014*	Closing date/time for receipt of proposals
Week of November 17, 2014*	Interviews/Discussions (if held)
January 9, 2015*	MTC Operations Committee Approval

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

VI. SUBMITTAL OF PROPOSALS

1. Interested firms must submit an original and ten (10) hard copies of their proposal by **4:00 p.m., October 30, 2014**. One (1) electronic copy of the full proposal in PDF format, and separate electronic files containing all relevant forms must also be submitted via USB drive. **Submission of an electronic copy of the proposal without hard copies, or submission of hard copies without the electronic copy, will not satisfy the submission requirement.**
2. Proposals are to be addressed as follows:

Metropolitan Transportation Commission
Attention: Derek Toups
101 8th Street, 3rd Floor Receptionist
Oakland, CA 94607
3. Proposer's name and return address must also appear on the envelope.
4. Proposals will be received only at the address shown above and **no later than the date and time indicated**. MTC is not responsible for deliveries delayed for any reason. Any proposals received after said date and time or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened.
5. No proposals submitted solely by email and no faxed proposals will be considered.
6. All proposals, whether delivered by an employee of the Proposer, U.S. Postal Service, courier or package delivery service, must be received and time-stamped at the stated address **prior to or no later than the time designated**. The timestamp located on the 3rd floor at the receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of proposals.
7. Proposer agrees to and acknowledges all RFP specifications, terms and conditions and indicates ability to perform by submission of a proposal.
8. A signed proposal submitted to MTC in response to this RFP shall constitute a binding offer from Proposer to contract with MTC according to the terms of the proposal for a period of 180 days after the proposals are due to MTC.
9. A proposal may be withdrawn at any time before the date and time when proposals are due by submitting a written request for its withdrawal to the MTC Project Manager.
10. This RFP does not commit MTC to award a contract or to pay any costs incurred by any Proposer in the preparation of a proposal in response to this RFP.
11. Only one proposal will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.

12. MTC reserves the right to accept or reject all proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all Proposers.
13. MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFP.
14. If the selected Proposer fails to enter into a contract with MTC in a timely manner as determined by MTC, in accordance with the terms and conditions of this RFP, MTC reserves the right to reject the proposal and enter into a contract with the next highest scoring Proposer.

VII. FORM OF PROPOSAL

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

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

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

Each proposal must include the following:

A. Transmittal Letter [Not to exceed two (2) pages]

Proposals must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and containing the name and telephone number of a contact person, if different from the signatory. Indicate whether there are any conflicts of interest, actual or apparent, that would limit the Proposer's ability to provide the requested services and describe the plan for mitigating such conflicts. Acknowledge the receipt of this RFP and any Addendum to the RFP. Indicate that the proposal is a firm offer to enter into a contract to perform work related to this RFP for a period of 180 days from the due date for proposals.

B. Title Page [Not to exceed one (1) page]

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

C. Table of Contents [Not to exceed two (2) pages]

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

D. Overview and Summary [Not to exceed five (5) pages total]

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

1. A discussion of the project's purpose;
2. A summary of proposed approach specific to each task;
3. The assumptions made in selecting the approach; and
4. Identification of any difficult issues that may affect the execution of the project and how these issues should be addressed.

E. Firm/Team Qualifications and Experience [Not to exceed eight (8) pages total]

1. Describe the Proposer firm/team qualifications specific to the areas of expertise set forth in Section I.C, the requirements set forth in Section II, Proposer Minimum Qualifications, and in the Scope of Work attached as *Appendix A*.
2. Include descriptions of up to five (5) relevant projects completed within the past 10 years by the Proposer (including subcontractors, if any) and include a description of the key staff involved in each project. The description should include the following [Not to exceed one (1) page per project]:
 - Project name;
 - Project category, one paragraph description of the type of project, purpose of the project, and the firm's scope of work;
 - Size of the project in terms of budget and scope;
 - Duration of project (e.g., 6 months) and year of completion;
 - Who, of the staff proposed for this contract, worked on the project and their role;
 - Client reference/contact.

F. Staff Qualifications and Experience [Not to exceed four (4) pages total, excluding resumes and organization chart]

1. Identify key personnel (including subcontractor personnel) and summarize qualifications of the key personnel who would be expected to work on the project, their availability, and the location of the office from which they do most of their work. Staff qualifications should include: a one-paragraph description of relevant experience specific to the project, proposed role, length of work experience and areas of expertise. [Not to exceed two (2) pages]

2. Include an organizational chart that shows roles and responsibilities of key personnel and reporting structure, including reporting and communication relationships between MTC and Proposer staff, including subcontractors, if any. Key staff members who are proposed to contribute the majority of work hours should be highlighted on the organizational chart. [Not to exceed one (1) 11” x 17” engineering-fold page]
3. Include a table expressing key personnel availability expressed as a percentage of their time commitments to the project relative to other assignments. [Not to exceed one (1) page]
4. Include a matrix that identifies skills versus responsibilities for all proposed staff and the key areas of expertise required for the project. [Not to exceed one (1) page]
5. Full resumes for key personnel may be included as an appendix. [Each key personnel resume not to exceed two (2) pages]

G. Detailed Work Plan (Not to exceed 20 pages total, excluding schedule)

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

1. Discuss how each task of the project will be conducted, identify deliverables, and propose a schedule. The proposal should discuss the tasks in sufficient detail to demonstrate a clear understanding of the project and component tasks. The proposal may include additional tasks or sub-tasks the Proposer believes necessary to accomplish the project goals. The schedule should show the expected sequence of tasks, sub-tasks and milestones. The selected Proposer, in consultation with MTC and the transit operators, will develop a final work plan and schedule for each deliverable.
2. Provide a staffing plan for each task. Identify all key personnel by name and the specific tasks for which each individual will be responsible. Provide a high level estimate of work effort, representing estimated effort levels based on experience. Identify other personnel by job description.
3. Describe approach to managing resources and maintaining quality results. Include a description of the role of any subcontractors, their specific responsibilities, and how their work will be supervised to maintain quality results. Detail where Proposer and subconsultants have worked together before.
4. Identify and explain any potential problem areas, such as scheduling bottlenecks, critical path items and any other obstacles to successful and timely completion of the Scope of Work, attached as *Appendix A*. Describe how the firm/team plans to address and overcome such obstacles, including methods, both formal and informal, to be used to track and resolve these problems/obstacles during the project.

H. References [Not to exceed three (3) pages total, excluding attachments]

1. Provide at least three (3) references that can attest to the Proposer's previous experience in performing work substantially similar or related to the project Scope of Work. References should include, at a minimum, a contact person for the reference projects that respond to requirements set forth in Section II, Proposer Minimum Qualifications. Please provide the names of current clients, along with the names, telephone numbers and email addresses of client contact person(s) for each reference. [Not to exceed one (1) page per reference]
2. Include in (only) the electronic copy of the proposal, as an attachment, one (1) sample written report developed by key members of the Proposer team for one (1) of the aforementioned reference projects. Sample work products will be considered in evaluating firm and staff expertise and experience, and written presentation effectiveness. Proposals that do not include sample written reports will be considered responsive and will be evaluated as presented. If a Proposer believes these materials contain trade secrets or other proprietary information the Proposer should follow the instructions included in Section IX, General Conditions, Article D, Public Records to indicate these work samples are confidential.
3. Provide a summary of all contracts your firm (including subcontractors) has held with MTC, MTC Service Authority for Freeways and Expressways (MTC SAFE), Bay Area Toll Authority (BATA), Bay Area Infrastructure Financing Authority (BAIFA), Bay Area Headquarters Authority (BAHA) or any of the entities listed in Attachment J to *Appendix D* to this RFP in the past three years, including a brief description of the scope of work, the contract amount, and date of execution (excluded from page count).

I. Cost Proposal [Not to exceed five (5) pages total]

Based on the tasks and staffing plan described in response to G.1 and G.2, listed above, provide a breakdown of the expected expenditures of funds for each task in the Procurement and Implementation phases as described in *Appendix A, Scope of Work*. The budget should include, but is not limited to, a task budget and a line item budget with billing rates for both phases.

1. A worksheet providing a breakdown of fully loaded rates for each resource, including direct labor, labor overhead, G&A, and proposed profit percentage must be included in the Cost Proposal, including proposed price escalations for each of the five (5) years of the contract term.
2. The task budget should present a breakdown of hours and expenses by task and deliverable in both phases of the Project. It should identify or refer to key personnel or job descriptions in relation to each task to provide a full explanation of the resources committed to the project. Expenses should be included such that all project costs are indicated. MTC will not pay for ordinary travel expenses, meals, or lodging for

Consultant staff or subconsultants who are based out of the local area, or permit add-on fees for use of subconsultants.

3. A line item budget should be submitted for both phases of the Project. The line item budget should present a breakdown of costs by cost categories, including billing rates for key personnel and job classifications. The line item budget should be set forth on the Cost Proposal Worksheet Form attached hereto as *Appendix B* to this RFP. A line item budget should also be submitted for proposed subconsultants with contracts estimated to exceed \$25,000. *Appendix B* is available in electronic spreadsheet format upon request.
4. Please include information (date and outcome) on firm's most recent pre-award audit, if applicable.

J. California Levine Act Statement

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

K. Insurance Provisions

Submit a signed acknowledgement that the Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix D-1, Insurance Requirements*, within ten (10) days of MTC's notice to firm that it is the successful Proposer. (See Section IX.B of the RFP for how to request exceptions to the minimum insurance requirements.)

L. Federal Requirements

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

M. Iran Contracting Act of 2010

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

N. Financial Responsibility

In a separate, sealed envelope: Provide a copy of Proposer's most recent annual and past quarterly financial filing. The financial statements will not be considered part of the proposal for

purposes of the California Public Records Act and will be reviewed to determine responsibility only. All financial statements will be returned to the Proposer prior to Consultant selection.

VIII. PROPOSAL EVALUATION

A. Verification of Minimum Qualifications

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

B. Review for General Responsiveness

The MTC Project Manager, in consultation with the MTC's Office of General Counsel, will conduct an initial review of the proposals for general responsiveness and inclusion of the items requested in Section VII. Proposers failing to meet the Minimum Qualifications listed in this RFP or to satisfy the federal Disadvantaged Business Enterprise (DBE) requirements (if applicable), will not be considered responsive. Also, any proposal that does not include enough information to permit the evaluators to rate the proposal in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. A proposal that fails to include one or more items requested in Section VII may be considered responsive, if evaluation in every criterion is possible. MTC reserves the right to request additional information from responsive Proposers prior to evaluation.

C. Evaluation Panel and Evaluation Criteria

Responsive proposals will then be evaluated by an evaluation panel of MTC and partner agency staff. The evaluation of the proposals shall be within the sole judgment and discretion of the evaluation panel.

All contact during the evaluation phase shall be through the MTC Project Manager only. Proposers shall neither contact nor lobby any evaluation panel members during the evaluation process. Any attempt by a Proposer to contact and/or influence members of the evaluation panel may result in disqualification of such Proposer.

Responsive proposals shall be evaluated on the basis of the following evaluation factors, listed in order of relative importance:

1. Approach to the scope of work, as listed and described in *Appendix A, Scope of Work* (35%);
2. Proposer firm/team experience, in relation to the expertise sought by MTC; this may include information gathered by MTC through references (20%);
3. Staff qualifications, including depth and commitment of resources proposed to be assigned to the Project (20%);
4. Cost Effectiveness (15%); and

5. Written and oral communication, as evidenced in the submitted proposal and through oral interviews (see below), if held (10%).

D. Proposer Discussions

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

The purpose of discussions with a Proposer on the “short list” will be to identify specific deficiencies and weaknesses in its proposal and to provide the Proposer with the opportunity to consider possible approaches to alleviating or eliminating them. These deficiencies or weaknesses may include such things as technical issues, management approach, cost, or team composition. Discussions may take place through written or oral communications. The Proposer’s project manager, as well as other key personnel identified by the evaluation panel, will be expected to participate in any interviews or discussions. A Proposer on the “short list” invited to participate in interviews or discussions will be expected to provide a presentation limited to 20 minutes consisting of an overview of its approach to the Project Scope of Work.

E. Request for Best and Final Offer

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

MTC reserves the right not to convene discussions and to make an award on the basis of initial proposals (with or without interviews). Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint. References may be contacted at any point in the evaluation process.

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

IX. GENERAL CONDITIONS

A. Award

Any award made will be to the Proposer whose proposal is most advantageous to MTC based on the evaluation criteria defined in Section VIII. If the selected Proposer fails to enter into a contract with MTC in a timely manner as determined by MTC, in accordance with the terms and

conditions of this RFP, MTC reserves the right to reject the proposal of the selected Proposer and enter into a contract with the next highest scoring Proposer.

B. Contract Arrangements

The MTC Standard Consultant Contract is attached as *Appendix D*. 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. If no such change is requested, the Proposer will be deemed to accept MTC's standard contract provisions, unless such language is protested in accordance with Section C below.

The selected Proposer will be required to maintain insurance coverage, throughout the term of the contract, at the levels described in *Appendix D-1, Insurance Requirements*. Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements in *Appendix D-1*, within ten (10) days of MTC'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. 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 pursuant to the protest provisions of this RFP must be brought to MTC's attention no later than the deadline for protesting RFP provisions or compliance with all material insurance requirements will be assumed.

The contract resulting from this RFP will be Task Order based, with payment based on MTC's receiving of satisfactory deliverables or cost reimbursement with ceiling, in accordance with duly executed Task Orders.

C. Selection Disputes

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

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

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

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

The MTC Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Should a Proposer wish to appeal the decision of the MTC Executive Director, it may file a written appeal with MTC, no later than 4:00 p.m. on the third business day after receipt of the written response from the MTC Executive Director. MTC's decision will be the final agency decision.

Authorization to award an agreement to a particular Proposer 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 MTC Executive Director or, if the decision of the MTC Executive Director is appealed, the issuance of MTC's decision.

D. Public Records

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

If the Proposer believes any proposal 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, including financial information submitted under Section VII of this RFP, as confidential and shall include the following notice at the front of its proposal:

“The data on the following pages of this proposal, including financial information submitted under Section VII of the RFP, 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 proposal, 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 proposal confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the Proposer may not designate any required proposal forms or the cost proposal as confidential. Consequently, any language purporting to render any proposal 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 Proposer 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 proposal, and/or 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.

E. Key Personnel

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

The following positions are required to be filled by key personnel:

1. Proposer's Project Manager
2. Technical Engineering Design Lead
3. Financial Payments and Accounting Design Lead

F. Conflicts Of Interest

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

The Proposer further warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code Sections 1090 *et seq.* or 87100 *et seq.* during the performance of services under any contract resulting from this RFP and that it will not knowingly employ any person

having such an interest. Violation of this provision may result in the contract being deemed void and unenforceable.

Whenever MTC 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, the Consultant 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.

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

G. Personally Identifiable Information

Proposer 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 of Appendix D, MTC Standard Consultant Contract.

H. Pre-Award Audit

Federally funded contracts in excess of one million dollars (\$1,000,000) may require a pre-award audit. The pre-award audit examines the proposed Consultant's accounting, estimating, administrative systems, proposed costs, financial condition, and the proposed contract language.

APPENDIX A, SCOPE OF WORK

PROJECT OVERVIEW

Created by the state Legislature in 1970, the Metropolitan Transportation Commission (MTC) is the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area. MTC's work is guided by a policy board whose membership is appointed by local elected officials in each county.

MTC, in coordination with regional transit agencies and operators, currently manages a contract to deliver the Clipper® Program, a regional fare collection system serving over 700,000 active participants who use public transportation within the nine-county San Francisco region. The program distributes, operates and maintains in-vehicle and platform card reader devices, ticket vending machines, fare gates, settlement services, customer service centers, and reporting solutions designed to deliver an all-in-one transit card payment solution. The Clipper® system has been in operation since 2002 and now serves eight transit operators which operate primarily in the urbanized portions of the region. Expansion of Clipper® is currently underway, with additional suburban bus and rail operators in Alameda, Contra Costa, Marin, Napa, Solano, and Sonoma counties due to launch Clipper® service by 2016.

In 2013, the Clipper® agencies began planning for a next-generation electronic fare collection system (hereafter referred to as "Project"), with a focus on meeting agency and customer needs, taking advantage of technological advances, and driving down the complexity and cost of fare collection in the region. The Project is being developed by MTC in partnership with more than 20 regional transit operators following a four phase work plan (Figure 1). This Scope of Work will support the Procurement and Implementation phases of the Project, with the option that work may continue into the Operations phase. The Consultant will be managed by MTC in partnership with the participating operators. For a list of participating agencies, visit <http://www.clippercard.com>.

Figure 1 – Phases of the Next-Generation Clipper® Project Development Plan



The Planning phase began in 2013 and is scheduled to be completed in 2015 with delivery of an initial System Description/Concept of Operations (ConOps) document, preliminary Procurement Strategy, preliminary Capital Cost Estimates, and a preliminary Transition Plan. These work products will need to be reviewed and confirmed by the Consultant during the early stages of the Project.

The following scope of services defines Consultant activities required to support the two (2) subsequent phases of the Project: Procurement and Implementation. **Additional activities to support the Operations phase of the Project are optional hereunder and included for**

reference only; if assigned under the Agreement, such activities will be further refined in the applicable Task Order. MTC and/or one of the transit operators participating in Clipper® may instead elect to procure consultant support for the Operations phase separately at a later date.

TASK ORDER METHOD OF CONTRACTING

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

SCOPE OF SERVICES

Task 1. - General Project Support

1.1 Project Administration

Consultant shall provide general administrative support, including, but not limited to, tracking overall progress of the work phases described above, managing project schedule(s), conducting project meetings, and coordinating with other agencies for the duration of the Project. Consultant will receive direction from the MTC Project Manager under the direction of MTC and in consultation with the transit operators. Consultant shall monitor and coordinate project work and progress towards completion of specified deliverables to assure quality, accuracy and consistency of all documents. Consultant shall submit monthly progress reports and invoices for the duration of the Project. Progress reports shall summarize the progress of each active task, and provide notice of any scope, budget or schedule changes. Consultant shall establish and manage subcontractor relationships as necessary.

Deliverable(s): Monthly Progress Reports and Invoices; Project Schedule; and Project Deliverable Progress Tracking Report.

1.2 Project Communications and Committee Meeting Administration

Consultant shall communicate about the status of work regularly. Consultant shall coordinate and manage periodic status update conference calls with the MTC Project Manager, as required for the duration of the Project. It is expected that Consultant shall support up to one (1) meeting per month with up to four (4) different Project working groups [currently a) Long-Range Planning; b) Design; c) Steering; and d) Executive] and respond to ad-hoc inquiries as needed. Consultant shall prepare all meeting agendas, document summary meeting notes (decisions/actions), and maintain a list of open project action items for the duration of the Project. Materials should be distributed one week prior

to the meeting and meeting summaries should be distributed three (3) working days following the meeting unless otherwise specified.

Deliverable(s): Meeting schedule; event calendar; list of upcoming deliverables/milestones; agendas; presentation materials; summary notes (with action items/decisions); and action item completion status and responsibility tracking registry.

1.3 Strategic Advice

Consultant shall bring forward the full breadth of their firm's procurement strategy advisory experience, management lessons, and technical expertise to support the Project. In addition to its core project management team, Consultant shall include research, advice and leading practice recommendations from a wide-range of Subject Matter Experts (SMEs), upon which MTC and the transit operators can draw useful insights, as needed. The available resources should include both thought leadership and practical lessons gained from application of advisor skills to similar project situations. Consultant must demonstrate ability to apply expertise in our local context. Consultant shall fully confirm SMEs who offer strategic advice are free of potential or actual conflicts of interest. SMEs shall provide white papers, case study examples, direct strategic advice, make presentations to key committee meetings or provide written analyses as needed to support Consultant's work hereunder or to respond to specific requests from MTC or transit operators.

Deliverable(s): Industry leading practices and case-study examples for fare collection system procurement; leading practice organization; process model and vendor performance measure options that align to Clipper® project goals; and general strategic advice, including in the form of presentations or written analyses, as required.

1.4 Project Controls

Consultant shall develop a structured approach to effectively manage the Project through project controls (e.g., schedules, budgets, work breakdown structure, resource plans, project risks/mitigations, etc.).

1.4.1 Budget and Funding

Consultant shall develop a multi-year capital and operating budget for the Project and track revenues and expenditures against the budget, for the phases of work completed under the Contract. Consultant shall maintain a contingency in the budget to accommodate unanticipated needs or impacts to the Project.

1.4.2 Work Breakdown Structure, Schedule and Resource Plan

Consultant shall prepare a Project work plan within three weeks from Contract execution, with milestones, and deliverables covered by this Scope of Work (including adequate review time by all affected agencies) and the anticipated Project milestones and schedule activities or phases of work for the system integrator/contractor(s). Upon approval by the MTC Project Manager, the work plan shall be baselined and a high level resource plan will be developed with assignments of tasks to specific resource groups. Consultant shall evaluate Consultant and vendor(s)/contractor(s) performance against the Project schedule,

report variances and publish monthly schedule updates showing the percentage of work completed by task as part of the regular progress report. Consultant shall develop and implement strategies for managing scheduling dependencies to keep work moving forward effectively.

1.4.3 Risks

Consultant shall define and assess potential project risks and uncertainties related to cost, funding, schedule, coordination, technical issues or institutional considerations at all phases of the Project. Consultant shall develop and maintain a Risk Management Plan that includes an assessment of the probability of occurrence, level of impact, and possible mitigations for each risk, at each phase of work, as required to maintain project risk at an acceptable level. Consultant shall also address the techniques to be used in the administration of the Project to manage and control the various risks identified. Consultant shall monitor project risks routinely to determine when they have been triggered and submit monthly updates with the Project Progress Reporting (Task 1.1).

1.4.4 Quality

Consultant shall develop an overall Project Quality Assurance/Quality Control (QA/QC) Plan that identifies QA/QC procedures, roles and responsibilities to guide MTC and the transit operators, Consultant, and contractor(s)' work for the duration of the Project. Consultant shall ensure that required quality procedures are applied to the Project. Task 3.5 defines separate, specific QA/QC activities regarding quality of the contractor(s) work scope.

1.4.5 Documentation

Consultant shall oversee the documentation management required for the Project. Formal communications shall be used to establish a permanent document trail of the procurement, implementation, and operations including version control and document repository management, as required. This work shall include responding to and maintaining copies of all incoming Project correspondence, such as system integrator/contractor(s) submittals, drawings, schedules, test plans, and Requests for Information (RFI(s)). All communication with contractor(s) shall flow through the MTC Project Manager. Documentation shall also include correspondence between the Consultant and MTC Project Manager. Correspondence shall be logged and tracked via an alpha-numeric system, with references to related correspondence. A sequential record shall be maintained of all meeting minutes, including design reviews, topical reviews, Project trip reports, and Project progress meetings.

1.4.6 Financial Controls

Consultant shall analyze and include requirements for functionality of a Generally Accepted Accounting Principles (GAAP)-based general ledger structure/financial system with controlled journal entry posting and all associated modules and subsidiary ledgers to perform the financial activities of the Clipper® Customer Service Functions. This includes credit card processing, bank payment processing and transaction reconciliations for all the open fare payments, reporting, financial accounting, revenue management and daily

settlement reporting. This also includes system flexibility and adaptability for exception transaction processing, reporting and reconciliation. The system shall account for completeness of transactions, accountability and auditability of transactions. Consultant shall provide independent verification and validation of the development of the financial system during the design, testing, and implementation phases. This also includes financial and data interfaces between the financial system and the banks, the point of sale devices, and any others. Compliance requirements for financial auditors of participating agencies and MTC include, but are not limited to, Uniform Guidance of Super Circular standards, Governmental Accounting Standards Board (GASB), Standards for Internal Control in the Federal Government (Green Book), with Committee of Sponsoring Organizations (COSO) for internal control.

Deliverable(s): Draft and Final Program Management Plan; Communications Strategy; Budget; Schedule; Risk Management Plan; and QA/QC Plan.

1.5 Systems Engineering

Consultant shall ensure that the contractor(s) follow a systems engineering process to maximize the quality of the Project and to ensure that the deployed system adequately meets the needs and objectives of MTC, the transit operators, state and federal agencies, and the public (in accordance with US DOT Final Rule, Part 940-ITS Architecture and Standards, Section 940.11 Project Implementation).³ Consultant shall assist MTC in obtaining federal authorization to proceed (E-76) with the Project from Caltrans and the US DOT.

1.5.1 ITS Architecture/Systems Engineering Review

Caltrans requires that a Systems Engineering Review Form (SERF) be completed for all non-exempt federal-aid ITS projects. The SERF requires that the Project be mapped against the regional ITS architecture. This form must be completed by local agencies at project initiation. Consultant shall prepare the SERF on MTC's behalf and assist MTC with the SERF submittal to Caltrans. Caltrans will classify the Project as having "low" or "high" risk, pursuant to Local Assistance Program Guidelines.⁴ Consultant shall also recommend updates to MTC's Bay Area ITS Architecture that may be necessitated by the Project/SERF review process.

Deliverable(s): Systems Engineering Review Form

1.5.2 Systems Engineering Management Plan (SEMP)

Consultant shall prepare a Systems Engineering Management Plan (SEMP) for the Project. Regardless of the level of oversight determined for each process milestone deliverable, the completed SEMP must always be submitted to FHWA for review and approval at completion of the system definition tasks, generally after the Preliminary Design Review (PDR) (Task 3.6.1) is complete. This approval and the federal authorization (E-76) will allow MTC to proceed with system design and implementation. Specific SEMP development and documentation guidance can be found at the "Systems Engineering

³ US DOT Final Rule, Part 940: http://www.ops.fhwa.dot.gov/its_arch_imp/policy.htm

⁴ Local Assistance Program Guidelines, Risk Assessment for ITS: <http://dot.ca.gov/hq/LocalPrograms/ITS/ITS.htm>

Guidebook for ITS" web site (www.fhwa.dot.gov/cadiv/segb/). The FHWA review process can be expedited by documents being sent via email to FHWA simultaneously with distribution to Caltrans and/or other stakeholders involved in the project development. Paper copies are not required, unless the materials cannot be sent electronically.

Deliverable(s): Draft and Final Systems Engineering Management Plan

1.6 Special Studies

Consultant may be directed to assist MTC and the transit operators with special studies such as the preparation of environmental documents, Title VI analyses, etc. such as may be required pursuant to Federal Transit Administration (FTA) Circulars 4702.1B or 4703.1.⁵ Consultant may also be directed to examine existing fare structures, pricing policies, fare media options, inter-operator transfer agreements, institutional programs, fare distribution strategies, where and how fare media is currently sold, etc. This data may be used to define fare policy alternatives associated with the new payment options and identify opportunities to leverage the unique capabilities of the technologies being introduced.

1.6.1 Environmental Assessment for CEQA and NEPA

Perform environmental analysis as needed.

1.6.2 Title VI/Environmental Justice Review of Fare Policy Changes

Consultant may be requested to perform a regional Title VI review in compliance with FTA Circular 4702.1B, that addresses any planned regional fare policy changes documented in the Project ConOps. This task assumes that each transit agency will be responsible for its own direct Title VI analysis prior to implementation of any fare change but those analyses may be consolidated or coordinated as part of this task. Consultant shall initiate data collection (including outreach to minority and Limited English Proficient riders), identify Title VI policy or data concerns in the planning documents, and develop a schedule and budget for Title VI analyses.

Consultant may also be requested to perform a regional Environmental Justice (EJ) analysis, as per FTA Circular 4703.1, that evaluates potential benefits to and burdens on minority and low-income populations as well as potential strategies to mitigate any disproportionate disparate impacts addressing these same fare policy changes. This review shall consider the impact of the Project on unbanked and/or underbanked customers. Should the transition appear to result in disparate impacts or disproportionate burden on such customers, Consultant shall identify mitigation measures in the review that reflect a balance of the needs of the unbanked and underbanked customers as well as the needs of MTC and the transit operators.

Deliverable(s): Environmental studies; Title VI review; Environmental Justice analysis; as needed.

⁵ FTA Circular 4703.1: http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf

FTA Circular 4702.1B: http://www.fta.dot.gov/documents/FTA_Title_VI_FINAL.pdf

1.7 Review System Description/Concept of Operations

Consultant shall review the work products provided by MTC at the completion of the Planning phase of the Project. These will include, at minimum, the initial System Description/ConOps, Preliminary Procurement Strategy, Initial Capital Cost Estimates, and Preliminary Transition Plan. Consultant shall review and confirm the direction of the Planning deliverables or identify missed opportunities, risks, or unanswered questions in those documents that require additional strategic direction. Consultant shall update the Planning work products as needed (see also Task 2 activities below).

Deliverable(s): Review and confirmation of Planning-phase work products.

Task 2. - Procurement Phase Activities

2.1 Requirements Capture

Building on the ConOps document, Consultant shall use a proven approach to elicit and confirm user and stakeholder needs and system (e.g., functional, technical, environmental, financial, performance, etc.) requirements to support the Project. Requirements shall be sufficiently detailed so as to allow measurement of whether the final system achieved the requirement by an objective third party. Consultant shall facilitate a process to reconcile conflicting requirements. Consultant shall list and track requirements by developing and using a tracking tool through the life cycle of the project. The output of this step shall be a Preliminary System Requirements Document.

Deliverable(s): Requirements capture workshop materials (e.g., agendas, slides, etc.) and Draft and Final Preliminary System Requirements Document in an MTC-approved format.

2.2 Fare Media/Distribution Strategies

Assess distribution strategy to ensure an equitable, comprehensive and rational strategy for card and fare media distribution. Evaluate investments in mobile and/or open payments, card and ticket vending machines (TVMs), retail outlets, point of sale (POS) locations, employer benefits, transit ticket offices and Web presence. Address equity, cost-effectiveness and convenience of said options. Define strategies for card and application issuance and management. Recommend brand use, including standards, usage rights, compliance, etc.

Deliverable: Draft and Final Fare Media/Distribution Strategies with agency comments/disposition matrix

2.3 Sales Channel/Third Party Retail Network

MTC may require a third party contractor to create a retail network to vend e-cash/sell pre-paid fare media which may be used in the Project. MTC may elect to solicit a contract separately from the contractor(s). Should this occur, Consultant shall assist MTC in preparing the scope of work for such contract to be incorporated into a separate, stand-alone competitive procurement seeking proposals from the pre-paid fare media management market.

Deliverable: Retail network analysis and scope of work, as needed

2.4 Final Procurement Plan

Consultant shall finalize a preliminary procurement strategy. The Procurement Plan will identify contracting strategies, including an analysis of the pros and cons of alternative options, that shall serve as the basis for MTC and the transit operators to procure the services and supplies required to execute the Project.

Deliverable: Draft and Final Procurement Plan with stakeholder comments/disposition matrix.

2.5 Funding Strategy

Consultant shall prepare a Funding Strategy document that outlines the various options and recommendations for funding the Project.

Deliverable(s): Draft and Final Funding Strategy with agency comments/disposition matrix

2.6 Peer Agency/Vendor Outreach

Consultant shall assist MTC and the transit operators with technology trade studies that involve research and outreach to peer agencies and prospective system integrators and equipment suppliers as needed. The goal of these studies is to improve MTC and transit operators' understanding of available products and services from which future fare collection system equipment and operations/maintenance could be built. Consultant shall compile information from peer agencies on vendor/supplier, product (i.e., hardware/software) mix, and operating model. At MTC's request, Consultant shall arrange for MTC and/or transit operators to engage in detailed discussions with peer agencies about their respective program status, experience and lessons learned, including vendor experience/reference data. During the Procurement Phase, Consultant may be asked to submit documentation to peer agencies for formal review. Consultant shall assemble a Prospective Bidders List and original equipment manufacturer (OEM) cut sheets for available commercial off-the-shelf products and services. Consultant shall assist MTC and transit operators in inviting prospective bidders and equipment suppliers to demonstrate their latest products and services.

Deliverable(s): Requests for Information, Prospective Bidders List and OEM cut sheets.

2.7 Technical Specification(s)

Consultant shall develop comprehensive Technical Specifications document(s) to support system procurement as per the above-defined requirements and procurement plan. An integral part of the Technical Specification(s) development shall be identification of all required Clipper[®] system interfaces, method of integration and deployment, operating procedures and any required integration with external systems. The Technical Specification(s) shall include, at a minimum, the following sections:

- Existing System Description;

- Scope of Work;
- Software and Hardware Requirements;
- Network Requirements;
- Operational Monitoring, Financial Accounting, and Technology Management Requirements; and
- Reliability and Compliance Requirements

Consultant shall iteratively deliver draft documents for MTC and transit operators to review and comment for each of the submittals listed below. Consultant shall then evaluate agency input and incorporate appropriate MTC and transit operator comments and meet with agency staff to discuss how comments were handled. Consultant shall deliver the final document(s) for each of the deliverables listed below by the due dates specified in the Task Order Schedule:

2.7.1 65% Technical Specification(s)

Preliminary Draft Specification(s), prerequisite to Task 2.7.1 (RFIs).

2.7.2 95% Technical Specification(s)

Final Draft Specification(s), incorporates input from preliminary agency review and RFIs.

2.7.3 Final Technical Specification(s)

Final Specification(s) for RFP (Task 2.7.2).

Deliverable(s): 65%, 95% and Final Technical Specification(s), with agency comments/disposition matrix at each interval.

2.8 Engineer's Estimates

Consultant shall iteratively deliver capital and operating cost estimates that expand on earlier Planning-level cost estimates. Based upon the iterative Technical Specification(s) (Task 2.7) development and other factors, the engineer's cost estimates shall include all capital investment, systems engineering, integration, software development, installation and testing, operations and maintenance; including labor, fringe benefits, overhead, profit, and other direct costs that are anticipated for the Project.

2.8.1 Updates of the Engineer's Estimates

Consultant shall provide regular (annual or more frequent) updates to the engineer's cost estimates that incorporate the time value of money and cost of materials, scope changes or other pertinent information that improves the accuracy of the estimates. At a minimum, estimates shall be delivered with each of the Technical Specification(s) submittals (Tasks 2.7.1, 2.7.2 and 2.7.3).

Deliverable(s): Engineer's estimates with 65%, 95% and Final Technical Specification(s) submittals, periodic updates thereafter as necessary to remain current.

2.9 Solicitation Documents

Consultant shall assist MTC with one (1) or more contract solicitation processes to procure the contractor(s) that will design, develop and implement the Project. The development of the contractual documents for the selection of the contractor(s) shall be developed so as to attract a variety of competent, qualified, innovative, complete and viable proposals.

2.9.1 Request(s) for Information

Following the receipt of agency comments to the 65% Technical Specification(s) (Task 2.5.1), Consultant shall assist MTC in releasing one or more RFIs to potential contractors for industry review. Consultant shall develop a cover letter and questionnaire to accompany the release of the document, and provide support to MTC in the preparation and submittal of the RFI package(s). Consultant shall compile and analyze industry comments and summarize the findings from the RFI process for MTC and the transit operators. Depending on the input received from industry and feedback from MTC and transit operators, Consultant shall incorporate industry input into the 95% Technical Specification(s) to address industry concerns.

2.9.2 Request(s) for Proposals

Consultant shall prepare one (1) or more RFPs that include contractual terms and conditions, detailed statement(s) of work, technical specifications, evaluation and selection criteria, payment terms, payment milestones, schedule milestones, etc. and will assist MTC's Office of General Counsel in the development of a complete standard agreement, including the provision of draft and/or sample contract language and terms and conditions for system integration and maintenance activities, for incorporation into MTC's draft standard agreement to be attached to the RFP(s). Upon request, Consultant shall identify proposed contractual provisions to address business risks such as contractor transition, insurance, limitations of liability, indemnification, risk of revenue loss, and inter-contractor agreements. MTC will be responsible for finalizing the standard agreement in accordance with agency legal requirements. The RFP(s) shall direct vendors to propose services and supplies that satisfy the Project requirements.

Deliverable(s): RFI package(s) (cover letter, questionnaire, etc.); summary of industry comments received; and RFP package(s) (contract, scope of work, specifications, evaluation criteria, etc.).

2.10 Procurement(s) Support

During the solicitation period, Consultant shall provide support to MTC on all aspects of the procurement process(es). Consultant shall serve as an advisor to MTC on selection panel(s) and shall provide all the necessary support to the MTC Project Manager and the selection panel(s) for the development, advertising, evaluation, negotiations, including assistance conducting Best and Final Offer (BAFO) processes, and award of the implementation contract(s). The BAFO processes will include participation by all short-listed proposers, including separate individual meetings with each, with all meeting documentation to be provided by Consultant.

Deliverable(s): RFP Addenda; Q&A, Notices; Minimum Qualifications checks; technical review summary of proposals; interview questions; cost proposal analysis; memo on potential cost savings; meeting and negotiation documentation; revised solicitation/BAFO documents; evaluation methodology; and recommendation memo.

2.11 Conformed Specification(s)

Following final negotiations between MTC and the selected contractor(s), Consultant shall develop the conformed specification(s) based on the RFP specification(s), proposals received, best and final offers (BAFOs), negotiation meeting materials, etc. that comprises the agreement, scope of work, cost proposal, payment schedule, Implementation schedule, intellectual property/software conditions, and other MTC-required certifications and forms, for inclusion in the final contract(s) to serve as the baseline for contractor(s) performance. Consultant shall assist MTC in finalizing the conformed specification(s) prior to MTC's issuance of contract notice(s) to proceed.

Deliverable(s): Conformed Specification(s) with supporting documentation.

2.12 Final Transition Plan

Consultant shall finalize the preliminary Transition Plan. The Final Transition Plan should identify necessary contract actions, tasks, task dependencies, and quality measures that will be needed to successfully execute the transition. Consultant shall coordinate with MTC and transit operator staff and consultants to develop a parallel Customer Education and Outreach Plan that supports transition to the successor system. The overarching objective of the transition shall be to minimize confusion and disruption for both agency personnel and customers. The Final Transition Plan shall consist of the following sections, at a minimum:

- Contract and Policy Transitions
- Device and Media/Distribution Transition
- Project Implementation Staging
- Cutover Plan, including Customer Account Transition
- Customer Education and Outreach Plan

Deliverable(s): Draft and Final Transition Plan with agency comments/disposition matrix.

Task 3. - Implementation Phase Activities

3.1 Contractor(s) Oversight

Consultant shall provide project oversight services that allow MTC and the transit operators to effectively monitor and manage Project Implementation and the contractor(s). Consultant shall supply on-site project management staff to assist MTC and the transit operators in ongoing monitoring of Project progress and contractor compliance with the terms of the System Integrator and/or Supplier contract(s), and as-needed support to resolve key issues as they arise. Consultant shall provide regular Project progress reporting and immediate notification of any technical, budgetary, or schedule concerns.

Deliverable(s): Contractor oversight support as needed.

3.2 Work Progress Monitoring

Consultant shall review the contractor(s) schedule updates and progress of work, and provide a monthly (or more frequently if required) status report that identifies any proposed schedule changes and impacts, compares actual progress against the updated approved baseline, and identifies any “red-flag issues” related to the project as far as schedule, budget, and scope and quality of work.

Deliverable(s): Monthly summary report of contractor(s) progress including budget status

3.3 Contract(s) Data Requirements List (CDRL) Monitoring

Consultant shall work with the contractor(s) to ensure that the contractor(s) properly develop the CDRL(s). Once a CDRL is approved, Consultant shall monitor and maintain status for all CDRLs. The CDRLs will be integrated with the design development process and maintained in the contractor(s)’ document control system. The CDRLs will include the item number and specification reference, description, response, due dates, status, responsible party, and closure date. No closure of an item on the CDRLs will be indicated until the submittal is approved by the MTC Project Manager.

Deliverable(s): CDRL status and all updates to CDRL documents.

3.4 Change Order Management

Consultant shall maintain a commercial awareness throughout all aspects of the Project and protect MTC’s rights and interests in considering and providing advice on the merits of alternative technical proposals from the contractor(s). Consultant shall maintain a comprehensive register of potential, pending and executed change orders. Consultant’s register shall include a description of the change, appropriate references to the affected specification requirements, and associated CDRLs, references to applicable correspondence and meeting minutes, and estimates of the associated cost (or credit) for the change.

Deliverable(s): Register of potential, pending, and executed change orders.

3.5 QA/QC Oversight

Consultant shall provide QA/QC oversight to ensure that contractor(s) provide and follow an effective QA/QC program. Consultant shall review the contractor’s QA/QC practices to ensure that they are suitable for the Project system design, development, manufacturing, installation, services, and software. Throughout the Implementation, Consultant shall ensure that required quality procedures are applied to the Project. Consultant shall perform documentation reviews and conduct physical site inspections to ensure that the contractor is following their QA/QC program. Consultant shall perform reviews randomly or on request throughout the duration of the Project.

3.5.1 Software QA/QC

Consultant shall ensure that the contractor employs well-structured and controlled software development methods as part of their QA/QC program. Consultant shall review the contractor's software quality assurance plan and assess the contractor's compliance with then current software development practices. For each of the contractor's suppliers, Consultant shall produce a compliance matrix illustrating their level of compliance, areas where changes are recommended, and areas where they do not comply but have acceptable alternative arrangements in place. Where software is identified by the contractor (and confirmed by Consultant) as critical for financial security and auditability, Consultant shall use software metrics to ensure that code does not become excessively complex and that testing and integration provides full coverage of the required functionality. Consultant shall ensure that the Contractor implements and maintains a Configuration Control System to monitor the state of development of each software module and to track changes. Consultant shall monitor progress of the software development, identify any issues that present a risk to achieving the project schedule or performance, and propose preventive and corrective actions.

Deliverable(s): Assessment on contractor(s) QA program(s); follow-up QC reports as needed.

3.6 Oversight of System Design and Development

Consultant shall be responsible for the oversight and management of the contractor(s) system design, development and pre-installation testing. This shall include all hardware, software, and services, including financial system software. Consultant shall utilize a proven design review approach to facilitate the timely review of all contractor(s) submittals. Consultant shall assist MTC and the transit operators with review of each design review package to determine whether the contractor(s) submittals satisfactorily meet the requirements of the contract(s). Consultant shall ensure that the contractor(s) submit design review packages to MTC and the transit operators prior to a scheduled design review meeting and that the design review packages are distributed and reviewed by the appropriate Project stakeholders.

3.6.1 Preliminary Design Review (PDR)

During this stage of design, the contractor(s) will need to demonstrate that the preliminary design satisfies system requirements with acceptable risk and within the cost and schedule constraints and establishes the basis for proceeding with more detailed design. Design concepts, including functionality of the financial software system, should be evaluated for feasibility, technical adequacy and general compliance with the requirements, and the relative merits/weaknesses of different concepts should be assessed. The PDR should result in the selection of valid design options, identification of all (internal and external) interfaces, and description of verification methods.

3.6.2 Critical Design Review (CDR)

The CDR is an intermediate design review that occurs after the detail design is complete and prior to the fabrication of prototypes or pre-production models. At this stage, the

contractor(s) will need to demonstrate that the maturity of the design is appropriate to support proceeding with full-scale fabrication, assembly, integration, and testing. The CDR is conducted to evaluate the design against the detailed requirements and has many of the components that were previously verified during the PDR (Task 3.6.1) such as the provision of assumptions and calculations used in the design, project progress and risk management. The CDR should determine that the technical effort is on track to complete the system development and that it can be expected to meet Project and operational performance requirements within the identified cost and schedule constraints.

3.6.3 Final Design Review (FDR)

The final design review will be conducted after prototypes or pre-production units have been through verification testing. Problems encountered during this stage of testing and the respective solutions should be examined by Consultant to ensure that any necessary changes with respect to performance, cost, reliability and manufacturing issues are agreed upon with the contractor(s) prior to the initiation of full-scale production. A number of other ad hoc reviews and test or production readiness reviews will also be needed during this stage of design.

Deliverable(s): Sign off (approval) on all deliverables including PDR, CDR, and FDR design reviews, designs, test plans, procedures and scripts

3.7 Installation Monitoring

Consultant shall provide equipment installation support (hardware and software) for equipment installations onboard vehicles and at MTC (back office) and transit operator properties, including, at a minimum, the following:

- Oversight of site preparation and engineering services;
- Assessment of transit operators' communications networks and identification of any required communications upgrades to support installation;
- Review of installation plans and installation requirements and schedules;
- Contingency planning for installation delays; and
- Assessing installation issues or changes requested by the contractor(s)

To expedite the installation process and avoid claims by the contractor(s), Consultant shall coordinate with MTC, transit operators, and the contractor(s) as necessary to anticipate and resolve issues before they arise. Consultant shall apply lessons learned from previous implementations of this nature. Consultant shall review contractor(s) development of installation, training, and QA/QC procedures. Consultant shall be available to support inspections of installation quality and verify that any defects are properly reported and resolved. Oversight shall be provided throughout the entire installation process in order to minimize issues during field testing and system launch.

Deliverable(s): Comments on installation and site preparation plans; site inspection reports; daily installation diaries; weekly summary reports; on-going punch list tracking; installation checklists; and site acceptance sign offs

3.8 Oversight of System Testing

Consultant shall provide support for the factory testing, installation and pre-acceptance testing of the equipment provided by the contractor(s). This includes performing independent verification and validation of the financial system including the general ledger and modules, related interfaces, etc. Testing requirements may include objectives and procedures for contractor(s) factory testing and acceptance testing; description of the organization and responsibilities for acceptance testing; phasing of testing; equipment and quantity to be tested; acceptance criteria; and confirmation of accuracy, maintainability and reliability. Specific test activities for Consultant shall consist of, at a minimum, documentation reviews, including review of plans and test procedures completed in accordance with contract requirements. Consultant shall provide testing support throughout the development and deployment of the Project. Consultant shall control, monitor, and enforce strict process to verify that testing is conducted as comprehensively and efficiently as possible. Consultant shall provide testing oversight services that complement the contractor(s)' own QA/QC programs. Consultant shall produce a report at the conclusion of each test witnessed. These reports shall indicate equipment performance, recommendations, and any open issues that require follow-up. The status of each inspection and test, and its associated documentation and comments, shall all be tracked as part of the project communications. Major phases of testing may include, but are not limited to, the following:

- Factory Acceptance Testing (FAT);
- Commissioning Tests;
- User Acceptance Testing; and
- System Acceptance Testing.

Deliverable(s): Comments to test plans and procedures; test witnessing reports; comments to contractor(s) test reports; test approval; and acceptance recommendations

3.9 Transition Support

The Project has the potential to disrupt existing operations of Clipper[®] and could impact MTC and the transit operators' existing organizations and approach to fare collection. Consultant shall support execution of the Transition Plan (Task 2.10) with the overall goal of minimizing confusion and disruption for internal organizations (MTC and transit operators) and Clipper[®] customers.

3.10 Support to Operational Procedures

Consultant shall assist MTC and the transit operators in the development and improvement of internal processes to support daily operation of the Project. Consultant shall assist managers at MTC and the transit operators to define roles and responsibilities required for operation of the Project, and work closely with MTC and transit operator staff to update existing standard operating procedures (SOPs) as necessary for effective system management and operations, inter-agency coordination, financial reconciliation, monitoring and maintenance of Project software, services and equipment. Consultant shall assist MTC and the transit operators in assessing the capabilities of existing staff to effectively handle

this change, and make recommendations regarding the assignment of new responsibilities and the identification of gaps where new expertise is necessary.

Deliverable(s): Assistance to MTC, transit operators, contractor(s) and customers before, during, and after Project transition to operations.

3.11 Risk Monitoring/Mitigation

Consultant shall update the Risk Management Plan submitted under Task 1.4.3. Updates shall include revisions to risk assessments based on actual Project progress. Analysis will include identification of risk mitigation options and strategies for risks that have been encountered and have potential impacts on Project execution.

Deliverable(s): Updated Risk Management Plan, annually or more frequently as needed

3.12 Claims Administration

If an issue on the Project results in a claim, Consultant shall support MTC with the claim analysis and response.

Deliverable(s): Claims analysis and evaluation response, independent cost analysis.

Task 4. - Operations Phase Activities (OPTIONAL SCOPE)

4.1 Operations Strategy and Agreements

Prior to the start of Project operations, Consultant shall assist MTC and the transit operators in updating the existing Operating Agreements. This will include several activities including but not limited to the following:

4.1.1 Operating Rules

Assist MTC and transit operators in updating the existing Clipper® Memorandum of Understanding (MOU) and Operating Rules.

4.1.2 Resource/Financial Planning

Assist MTC and the operators in establishing the annual work plan and budget for Clipper®.

Deliverable(s): Revised Clipper® Operating Rules, strategy documents, partnering agreements.

4.2 Operations Support

Consultant shall provide oversight during the initial operations, including monitoring performance of the contractor(s). This task will include but not be limited to the following:

4.2.1 Training Support

Consultant shall assist in scoping and evaluating training to be furnished by the contractor(s), including requirements for hardware and software training for all users of the payment system, training documentation submittals and formatting requirements such as student guides, and MTC and transit operator internal training program requirements.

4.2.2 Go Live and Initiation of Services

Assist MTC and transit operator staff with cutover execution, reporting, and go live wrap-up. Coordinate day-to-day activities related to oversight of contractor(s). Ensure that contractor(s) documentation is furnished in accordance with the Project operating agreement(s). Facilitate or attend Project meetings as directed by MTC.

4.2.3 Standard Operating Procedures (SOP)

Assist contractor(s) in the documentation of operations and maintenance procedures. Assist MTC and transit operator staff in monitoring Project and contractor(s) operations. Review Project and contractor(s) operational procedures and staffing. Provide recommendations for improvement or modifications.

4.2.4 Finance and Reconciliation

Assist MTC and transit operator financial staff with monitoring or review of Project financials, reporting and reconciliations, assist with contractor(s) financial management of Project, support agency audits, and provide recommendations for improvement or modifications. Review, verify and recommend approval of contractor(s) invoices for warranty and maintenance period, in accordance with above.

4.2.5 Business Intelligence

Assist MTC and transit operator staff in evaluating or developing data mining and reporting tools in support of agency decision making. Assist MTC in identifying the data needs of various stakeholders and improving their access to relevant system operations data within legal constraints. This may include identification of customer data required for operations and recommendations on how to integrate appropriate customer data for operations with consideration for privacy of Personally Identifiable Information.

4.2.6 Key Performance Indicators (KPI)

Review KPI reports submitted by contractor(s), conduct independent assessments and evaluations of KPI reporting, and provide recommendations for improvement or modifications. Review contractor(s) warranty and maintenance reports and calculate contractual payment deductions if contractor(s) fails to meet the KPIs. Assist the applicable contracting agency, in consultation with the transit operators and MTC, as applicable, in negotiations with contractor(s) relative to the performance measurements, along with any payment credits associated with underperformance.

4.2.7 Periodic Performance Testing

Assist the applicable contracting agency, in consultation with the transit operators and MTC, as applicable, in documenting monitoring procedures for operations and maintenance. Develop plan for the applicable contracting agency, in consultation with the transit operators and MTC, as applicable, to conduct periodic system and operational performance testing during operations. Perform day-to-day performance monitoring and assist with other operational monitoring and reporting assignments as directed. Perform independent analyses of contractor(s) performance using system-generated data and direct

observation, and produce reports for the applicable contracting agency, in consultation with the transit operators and MTC, as applicable, on a monthly basis.

4.2.8 System Maintenance and Operations Support

System maintenance and operations support shall include, but not be limited to, assisting MTC and transit operators with monitoring of day-to-day Project operations, oversight of contractor(s) maintenance program, supporting technical documentation reviews, system audits, training activities, equipment repair/inspection/audit activities, coordination of service-related changes and service interruptions (e.g., unplanned failures, outages, etc.), reviewing software build and distribution requests, assisting with documentation and approval of software change management, support to operational reporting and analysis, Project evaluations, funding, budget, invoice processing, etc.

4.2.9 Service Level Management and Analysis

Assist MTC and the transit operators in monitoring contractor(s) performance against established contractual Service Level Agreements (SLAs) and Customer Level Agreements (CLAs), ensure that necessary service levels are being achieved within the new system. SLAs and CLAs will exist for measuring performance at both the device-level and system-level and should include manual operating processes to be performed by contractor(s) as well. SLAs and CLAs will draw on industry best practices and external data inputs, such as performance data from peer agencies and retail environments, to establish a baseline with measurement of contractor(s) performance at system launch.

Deliverable(s): Operations support, including recommendations for improvement to SOPs, KPI, SLA, CLA and other measures, data/query/reporting analysis and financial support.

4.3 Asset Management

Consultant shall assist MTC and the transit operators in managing the existing assets incorporated with the Project and new assets obtained as part of the Project in accordance with federal surface transportation policies and laws (i.e., MAP-21 or later requirements). Consultant shall provide MTC and the operators with as needed project management and technical support to maintain an inventory management system and develop procedures to track new and current fare system equipment. Consultant shall also assist in managing equipment maintenance and planning for future replacement as needed. When equipment and software performance evolves to a steady state at acceptance and beyond, the process for support will shift to tracking warranty claims and servicing requirements. This includes card replacement, equipment life cycle and migration strategies, ticket vending, card vending and add value machine retrofit, replacement or decommissioning.

Deliverable(s): Fixed asset inventory tracking and equipment life-cycle analysis.

4.4 Configuration and Change Control

In addition to the requirements of Task 3.4, Consultant shall assist MTC and the transit operators in documenting changes to system requirements, if any, and help define appropriate criteria for modification of existing software and hardware elements. Consultant shall review the contractor(s) internal change control procedures, including

configuration management, and recommend adjustments to contractor(s) management of design and changes throughout the course of the Project. Consultant shall ensure that proper documentation (drawings, manuals, software code, etc.) is available to MTC and the transit operators when required by the contract(s) and that core existing system impacts are identified. Consultant shall assist in the preparation of contract change order (CCO) documentation as directed by the MTC Project Manager. Consultant shall support MTC in the change order process including scope and cost negotiations. Upon request, Consultant shall prepare an independent estimate and provide a cost-price analysis report to MTC. Following change order execution, Consultant shall monitor contractor(s) performance to ensure that the work can be completed within the allotted schedule and budget.

Deliverable(s): Requirements analysis; configuration changes; change notices; cost-price analyses; and change order documentation support.

4.5 Contract Closeout Support

At the time of contract closeout, Consultant shall provide a final closeout report that identifies the major Project milestones and activities and documents lessons learned. The report shall document all completed tasks and include a summary of final project accounting based upon actual MTC expenditures, including any claims, and an 'as-built' project schedule. Consultant shall also manage an orderly transfer of all Project files and records (electronic and paper) to MTC. This includes all Project related documentation including memos and files necessary for closeout. Consultant shall also manage the delivery of all contract related closeout documents and materials by the contractor(s) and shall ensure that all documents have been delivered by the contractor(s) and all punch list items, invoices and payments, change orders and claims are complete and closed-out. This task may also include overlapping work/developing and implementing procedures for transition of responsibilities to Consultant from MTC staff and prior consultants working on the Project, and transition of responsibilities back to MTC or transit operator staff or consultants as may be needed throughout the Project.

Deliverable(s): Contract closeout reports, project files, and records

Task 5. - Other Project Support As Needed

Consultant shall recommend strategies for partnering with potential future program affiliates, especially strategies for expansion to electronic parking payment. Assess existing parking opportunities and challenges (e.g., current approach for transit parking payment, mobile parking payment programs, other approaches for municipal parking, etc). Other potential partners include bike parking, bikesharing, carsharing, tolling, electric vehicle charging, social services organizations, retailers, financial institutions, and paratransit providers. Facilitate the evaluation of trade-offs between sequencing, technical complexity, potential value/customer interest, and resource constraints.

APPENDIX B, COST PROPOSAL WORKSHEETS

Name/Classification	Contract Year	Actual Hourly Rate and/or Average Hourly Rate	Fringe Benefit/Labor Overhead %	G&A %	Fee/Profit %	Fully Burdened Rate	Fully Burdened Overtime Rate	Effective Dates	of Hourly Rate	Escalation Increase %
								From:	To:	
Person #1	Year 1									
	Year 2									
	Year 3									
	Year 4									
	Year 5									
Person #2	Year 1									
	Year 2									
	Year 3									
	Year 4									
	Year 5									
Classification #1	Year 1									
	Year 2									
	Year 3									
	Year 4									
	Year 5									
NOTES:										
1. For all key team members that are listed on the Proposer's Organization Chart, list the name and corresponding job classification. For all other employees (i.e. support staff/non-										
2. For named employees enter the actual hourly rate. For classifications only, list the average hourly rate for that classification.										
3. Note any employees/classifications that are subject to prevailing wage requirements with an asterisk (*).										
4. Form above contains no formulas; Proposers may enter formulas as appropriate to complete the table.										

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Consultant: _____

Project Manager: _____

Contract No.: _____

Date: _____

Total Estimate:

Project Description: _____

EA: _____

Cost Center: _____

Task	Task Order #	Description	Schedule		Hours														Total Hours		
			Begin Date	End Date	Staff 1	Staff 2	Staff 3	Staff 4	Staff 5	Staff 6	Staff 7	Staff 8	Staff 9	Staff 10	Staff 11	Staff 12	Staff 13	Staff 14			
1		General Project Support																			-
2		Procurement Phase Activities																			-
3		Implementation Phase Activities																			-
4		Operations Phase Activities																			-
5		Other Project Support As Needed																			-
Totals =																					-

Task	Task Order #	Description	Hourly Rates:		Hourly Rates														Total Cost		
			Staff 1	Staff 2	Staff 3	Staff 4	Staff 5	Staff 6	Staff 7	Staff 8	Staff 9	Staff 10	Staff 11	Staff 12	Staff 13	Staff 14					
1		General Project Support	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
2		Procurement Phase Activities	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
3		Implementation Phase Activities	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
4		Operations Phase Activities	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
5		Other Project Support As Needed	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
Totals =																					-

Task	Task Order #	Description	Other Direct Costs	Total Cost
1		General Project Support		
2		Procurement Phase Activities		
3		Implementation Phase Activities		
4		Operations Phase Activities		
5		Other Project Support As Needed		
Totals =				

TOTAL ESTIMATED PROJECT COST =

APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT

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

MTC’s commissioners include:

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 M. Giacomini	Jake Mackenzie	Amy Rein Worth

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

YES NO

If yes, please identify the commissioner: _____

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

YES NO

If yes, please identify the commissioner: _____

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

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

APPENDIX D, MTC STANDARD CONSULTANT CONTRACT

PROFESSIONAL SERVICES AGREEMENT

between

METROPOLITAN TRANSPORTATION COMMISSION

and

NAME OF CONSULTANT

for

NEXT GENERATION CLIPPER[®] SYSTEM CONSULTANT SUPPORT

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

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PROFESSIONAL SERVICES AGREEMENT

Between METROPOLITAN TRANSPORTATION COMMISSION

And **INSERT NAME OF CONSULTANT**

For NEXT GENERATION CLIPPER[®] SYSTEM CONSULTANT SUPPORT

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 CONSULTANT**, (herein called "CONSULTANT"), 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 consultant support for the Next Generation Clipper[®] System Project (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 CONSULTANT will render professional services in connection with the Project as hereinafter provided.

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

A general description of the tasks to be required of CONSULTANT is included in this Agreement as Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. All required services shall be authorized by Task Order. All services described in a duly executed Task Order are hereby incorporated into the Agreement upon their execution. All Task Orders shall be developed according to the process established in Attachment A-1, Task Order Process, attached hereto and incorporated herein, and should include, at a minimum, a completed form as shown in Attachment A-2, Task Order Form.

CONSULTANT agrees to perform or secure the performance of all specified services in their entirety with respect to fully executed Task Orders within the Maximum Payment specified

in Article 3. Derek Toups (herein called "MTC Project Manager") is responsible for communication with CONSULTANT and the administration of this Agreement. MTC's Executive Director or designated representative may substitute a new MTC Project Manager by written notice to CONSULTANT.

CONSULTANT's point of contact and the individual authorized to communicate to MTC on behalf of CONSULTANT is [name to be inserted] ("CONSULTANT Project Manager"). A change in the CONSULTANT Project Manager requires MTC's written approval.

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

1.1 PROGRESS REPORTS

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

2. PERIOD OF PERFORMANCE

CONSULTANT's services hereunder shall commence on or after March __, 2014, and shall be completed no later than June 30, 2020, unless extended by duly executed amendment or earlier terminated, as hereinafter provided. CONSULTANT's services shall be performed in accordance with the schedule included in each signed Task Order.

3. COMPENSATION AND METHOD OF PAYMENT

Subject to duly executed amendments, MTC will pay CONSULTANT for its services as described in duly executed Task Orders a total amount, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subcontractors' costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee, not to exceed [**SPELL OUT AMOUNT IN WHOLE DOLLARS (\$_____)**] ("Maximum Payment"). MTC shall make payments to CONSULTANT in accordance with the provisions described in Attachment C, Compensation and Method of Payment, attached hereto and incorporated herein by this reference.

All invoices shall be submitted electronically via email to MTC at acctpay@mtc.ca.gov. Invoices are to be submitted on the monthly basis from the 1st to the 30th/31st. 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 CONSULTANT and, if applicable, their hourly rates and the estimated hours to be supplied by each are set forth in Attachment D, Key Personnel Assignments, 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 MTC Project Manager or a designee. CONSULTANT shall maintain records documenting compliance with this Article, which shall be subject to the audit requirements of Article 15. CONSULTANT agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. MTC reserves the right to direct removal of any individual, including key personnel, assigned to this work.

5. AMENDMENTS

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

6. TERMINATION

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

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

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

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

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

CONSULTANT shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the types of insurance and financial security listed in Attachment E, Insurance and Financial Security (Bond) Provisions, attached hereto and incorporated herein, against claims, damages and losses due to injuries to persons or damage to

property or other losses that may arise in connection with the performance of work under this Agreement. All insurance must be placed with insurers with a Best's rating of A-VIII or better.

8. INDEPENDENT CONTRACTOR

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

9. INDEMNIFICATION

To the maximum extent permitted by law, CONSULTANT 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 CONSULTANT caused by any breach of the Agreement or negligent act or omission or willful misconduct of CONSULTANT or its officers, employees, subconsultants or agents; or

B. Any allegation that materials or services provided by CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

CONSULTANT 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, CONSULTANT 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 CONSULTANT by MTC for use by CONSULTANT in the performance of its services under this Agreement shall remain the property of MTC and shall be returned to MTC at the completion or termination of this Agreement. No license to such MTC Data, outside of the Scope of Work of the Project, is conferred or implied by CONSULTANT’s use or possession of such MTC Data. Any updates, revisions, additions or enhancements to such MTC Data made by CONSULTANT in the context of the Project shall be the property of MTC and subject to the provisions of Article 11.

10.1 PERSONALLY IDENTIFIABLE INFORMATION

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

CONSULTANT agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose

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

11. OWNERSHIP OF WORK PRODUCTS

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

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

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

12. SUBCONTRACTS

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

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

C. Any substitution or addition of subcontractors listed in Attachment G must be approved in writing by MTC's Project Manager in advance of assigning work to such new subcontractor.

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

CONSULTANT shall not assign this Agreement, or any part hereof 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. MTC may freely assign this Agreement, in whole or in part, to any of the entities listed in Attachment J.

14. RECORDS

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

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

18. PROHIBITED INTERESTS

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

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

18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

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

CONSULTANT shall not engage the services of any subconsultant or independent contractor on any work related to this Agreement if the subconsultant or independent contractor,

or any employee of the subconsultant or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

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

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

19. LAWS AND REGULATIONS

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

Substitute the following for the preceding sentence if funds flow through State: Attachment H and its parts, [Federally Required Clauses](#), and Attachment I and its parts, [State Required Clauses](#), are attached hereto and incorporated herein by this reference.

USE ATTACHMENT I-1 AND I-2 TOGETHER, OR I-3 DEPENDING ON THE MASTER AGREEMENT FROM WHICH FUNDS FLOW.

20. CLAIMS OR DISPUTES

CONSULTANT shall be solely responsible for providing timely written notice to MTC of any claims for additional compensation and/or time in accordance with the provisions of the Agreement. It is MTC's intent to investigate and attempt to resolve any CONSULTANT claims

before CONSULTANT has performed any disputed work. Therefore, CONSULTANT's failure to provide timely notice shall constitute a waiver of CONSULTANT's claims for additional compensation and/or time.

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

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

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

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

21. REMEDIES FOR BREACH

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

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

22. TEMPORARY SUSPENSION OF WORK

MTC, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as MTC may deem necessary. The suspension may be due to the failure on

the part of CONSULTANT to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of CONSULTANT. CONSULTANT shall comply immediately with the written order of MTC to suspend the work wholly or in part. The suspended work shall be resumed when CONSULTANT is provided with written direction from MTC to resume the work.

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

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

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

23. WARRANTY OF SERVICES

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

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

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

CONSULTANT shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions.

24. DISPUTE RESOLUTION

A. Informal Resolution of Disputes. CONSULTANT and MTC shall use good faith efforts to resolve all disputes informally at the project manager level. In the event such efforts are unsuccessful, either party may request that MTC provide a written determination as to the proposed resolution of the dispute. Within twenty-one (21) calendar days of the request, MTC's Project Manager shall provide a written determination as to the dispute, which shall include the basis for its decision. Upon CONSULTANT's written acceptance of the MTC 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 MTC Project Manager's determination is not accepted by CONSULTANT, the matter shall promptly be referred to senior executives of the parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty (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 CONSULTANT which cannot be resolved through the informal efforts described above, may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time.

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

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

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

F. Survival of this Article. This Article shall survive completion or 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 the State 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 this 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, including any attachments, constitutes the complete agreement between the parties and supersedes any prior written or oral communications. CONSULTANT represents

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

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

METROPOLITAN TRANSPORTATION
COMMISSION

NAME OF CONSULTANT

Steve Heminger, Executive Director

[Insert Appropriate Name, Title](#)

ATTACHMENT A

Scope Of Work

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

Examples of some of the services to be performed by CONSULTANT are:

ATTACHMENT A-1, TASK ORDER PROCESS

Detailed Task Order Process:

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

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

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

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

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

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

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

Step 7 – Any services added to the Agreement by a Task Order shall be subject to all applicable conditions of the Agreement. Revisions to Task Orders shall require written approval by both the MTC Director of Electronic Payments and CONSULTANT. Revisions to Task Orders shall require written approval by both the MTC Director of Electronic Payments and CONSULTANT.

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

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

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

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

ATTACHMENT A-2
Task Order Form

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

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

A. Deliverables-based.

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

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

B. Time and Materials

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

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

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

METROPOLITAN TRANSPORTATION
 COMMISSION

CONSULTANT

 Carol Kuester, Director of Electronic Payments
 Date: _____

 Insert name and title of authorized individual
 Date: _____

Task Order Schedule

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

Detailed Description of Work

Task Order #: Title

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

ATTACHMENT B

Project Schedule

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

ATTACHMENT C

Compensation and Method of Payment

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

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

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

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

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

ATTACHMENT D
Key Personnel Assignments

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

ATTACHMENT E

Insurance and Financial Security (Bond) Provisions

1. INSURANCE

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

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

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

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

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

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

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

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

4. Umbrella Insurance in the amount of \$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 CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of CONSULTANT. No contract or agreement between CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.

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

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

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

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

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

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

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

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

required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

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

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

2. NOT USED

3. ADDITIONAL 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.

ATTACHMENT F

Special Conditions Relating to Personally Identifiable Information

CONSULTANT will have access to personally identifiable information (“PII”) in connection with the performance of the Agreement. PII is any information that is collected or maintained by MTC or CONSULTANT that identifies or describes a person or can be directly linked to a specific individual. Examples of PII include Clipper® patron name, mailing address, business name, e-mail address, phone or fax number, date of birth, credit card information, bank account number, Clipper® card serial number, or travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

1. Right to Audit

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

2. General Confidentiality of Data

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

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

CONSULTANT is prohibited from storing PII on portable media including, but not limited to, laptops, thumbdrives, disks and so forth.

Notwithstanding anything to the contrary in Article 14. Records, of this Agreement, CONSULTANT agrees to retain PII for no longer than **necessary for Consultant to carry out its contractual responsibilities under the Agreement, but no longer than the earlier to occur of: (1) four years and six months after the related Clipper® customer account is closed or terminated, or (2) the date of termination of the Agreement. Time-frame shall be no longer than the completion date of the Agreement. Special retention requirements apply to Clipper® Program PII.** At the conclusion of this retention period, CONSULTANT agrees to use Department of Defense

(“DoD”) approved methods to permanently remove PII from any files. Discarded PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic disk, optical disk, and memory chips (“Storage Media”). CONSULTANT agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. CONSULTANT also agrees to use DoD approved methods to sanitize any Storage Media prior to discarding or when useful life has ended, whichever comes first. 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.” These requirements shall survive termination or expiration of this Agreement.

3. Compliance with Statutes and Regulations

CONSULTANT agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 *et seq.*) and in the California Streets and Highways Code Section 31490. In addition, CONSULTANT warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and MTC relating to the handling and confidentiality of PII, including the terms and conditions contained in this Attachment F, Special Conditions Relating to Personally Identifiable Information and agrees to indemnify MTC against any loss, cost, damage or liability by reason of CONSULTANT’s violation of this provision.

4. Subconsultants

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

5. Consultant Guarantees

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

CONSULTANT 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.

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

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

6. Notice of Security Breach

CONSULTANT shall immediately notify MTC when it discovers that there may have been a breach in security which has or may have resulted in compromise to 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 SUBCONTRACTORS ARE BEING USED.

ATTACHMENT H

Federally Required Clauses

1. EQUAL EMPLOYMENT OPPORTUNITY

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

2. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

A. The CONSULTANT or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as MTC deems appropriate.

B. 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.

C. If a task order issued under this contract has a DBE goal, CONSULTANT must meet the DBE goal by committing DBE participation or document a good faith effort to meet the goal. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

D. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the local agency deems appropriate.

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

subconsultant performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime CONSULTANT and subconsultants.

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

2.3. DBE Records

A. CONSULTANT shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. 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 CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Project Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25% of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT 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 CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to the Agency's Contract Manager within 30 days.

3. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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

4. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

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

5. STATE ENERGY CONSERVATION PLAN

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

6. ALLOWABILITY OF COSTS

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

7. RELEASE OF FUNDS WITHHELD FROM SUBCONTRACTORS

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

8. LICENSE FOR FEDERAL GOVERNMENT PURPOSES

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

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

CONSULTANT agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. CONSULTANT

further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of three (3) years from submission of final expenditure report; four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer. Copies of CONSULTANT's audits, if any, performed during the course of Project development and at Project completion shall be forwarded to MTC no later than one hundred eighty (180) days after fiscal year end close.

11. AUDITS

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

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

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

CONSULTANT agrees to comply with 49 U.S.C. 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301 - 10, which provide that recipients and subrecipients of Federal funds and their consultants are

required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act.

CONSULTANT shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements, if used. CONSULTANT agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

13. ENERGY CONSERVATION.

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

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

- a. CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on CONSULTANT to the extent the Federal Government deems appropriate.
- b. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18

U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on CONSULTANT, to the extent the Federal Government deems appropriate.

- c. CONSULTANT agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor/subconsultant who will be subject to the provisions.

15. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

MTC and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to MTC, CONSULTANT or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from this Agreement.

16. DEBARMENT

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

17. CLEAN AIR AND WATER POLLUTION ACTS

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

18. LOBBYING

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

ATTACHMENT H-1
 Exhibit 10-O1: Local Agency Consultant DBE Commitment
 (Inclusive of all DBEs at time of proposal)

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

Consultant to Complete this Section			
1. Local Agency Name: _____ Metropolitan Transportation Commission (MTC) _____ 2. Project Location: _____ San Francisco Bay Area _____ 3. Project Description: _____ Next Generation Clipper [®] System Support _____ 4. Consultant Name: _____ 5. Contract DBE Goal %: _____ To Be Determined upon Task Order Issuance _____			
DBE Commitment Information			
6. Description of Services to be Provided	7. DBE Firm Contact Information	8. DBE Cert. Number	9. DBE %
Local Agency to Complete this Section		10. Total % Claimed	_____ %
16. Local Agency Contract Number: _____ 17. Federal-aid Project Number: _____ 18. Proposed Contract Execution Date: _____ Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate: _____ 19. Local Agency Representative Name (Print)		11. Preparer's Signature _____ 12. Preparer's Name (Print)	_____ 13. Preparer's Title
_____ 20. Local Agency Representative Signature	_____ 21. Date	_____ 14. Date	
_____ 22. Local Agency Representative Title	_____ 23. (Area Code) Tel. No.		
_____ 22. Local Agency Representative Title		_____ 15. (Area Code) Tel. No.	

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

INSTRUCTIONS - LOCAL AGENCY CONSULTANT DBE COMMITMENT

Consultant Section

The Consultant shall:

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

Local Agency Section:

The Local Agency representative shall:

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

ATTACHMENT 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: _____ Metropolitan Transportation Commission (MTC) _____ 2. Project Location: _____ San Francisco Bay Area _____ 3. Project Description: _____ Next Generation Clipper [®] System Support _____ 4. Total Contract Award Amount: \$ _____ 5. Consultant Name: _____ 6. Contract DBE Goal %: _____ To Be Determined upon Task Order Issuance _____ 7. Total Dollar Amount for <u>all</u> Subcontractors: \$ _____ To Be Determined upon Task Order Issuance _____ 8. Total Number of <u>all</u> Subcontractors: _____ To Be Determined upon Task Order Issuance _____			
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		14. Total % Claimed	13. Total Dollars Claimed
Caltrans District Local Assistance Engineer (DLAE) certifies that this form has been reviewed for completeness: _____ 28. DLAE Name (Print) _____ 29. DLAE Signature _____ 30. Date _____		_____ %	
		15. Preparer's Signature _____	
		16. Preparer's Name (Print) _____	
		17. Preparer's Title _____	
		18. Date _____	19. (Area Code) Tel. No. _____

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

INSTRUCTIONS - LOCAL AGENCY CONSULTANT DBE INFORMATION

Consultant Section

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.

USE IF FEDERALLY FUNDED. Consultant 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 #:
Next Generation Clipper [®] System Support			Metropolitan Transportation Commission			
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:	\$8.00	\$8.00			
			highlight + F9 = math					

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, CONSULTANT shall not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. CONSULTANT shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. CONSULTANT, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of the CONSULTANT'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements as appropriate.

3. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

4. CONSULTANT shall permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which CONSULTANT was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that CONSULTANT has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by CONSULTANT and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to CONSULTANT, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure CONSULTANT's breach of this Agreement.

ATTACHMENT I-2

NONDISCRIMINATION ASSURANCES

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

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

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

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

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

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

Appendix C;

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

Appendix D;

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

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

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

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

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

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

11. CONSULTANT shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. CONSULTANT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of STATE assisted contracts. The California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out the Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31 USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to CONSULTANT by STATE, acting for the U.S. Department of Transportation, and is binding on CONSULTANT, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

APPENDIX A TO ATTACHMENT I-2

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

(1) Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: CONSULTANT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: CONSULTANT shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to CONSULTANT's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request STATE enter into such litigation to protect the interests of STATE, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B TO ATTACHMENT 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 CONSULTANT shall accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the CONSULTANT all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto CONSULTANT and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on CONSULTANT, its successors and assigns.

CONSULTANT, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) *

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

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

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

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

APPENDIX C TO ATTACHMENT I-2

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by CONSULTANT, pursuant to the provisions of Assurance 7(a) of Attachment 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, CONSULTANT shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

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

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

APPENDIX D TO ATTACHMENT I-2

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the CONSULTANT, pursuant to the provisions of Assurance 7 (b) of Attachment 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, CONSULTANT shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

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

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

ATTACHMENT I-3, STATE DEPARTMENT OF TRANSPORTATION REQUIREMENTS

Caltrans Non – Discrimination

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

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

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

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

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

ATTACHMENT J, POTENTIAL ASSIGNEES

- Alameda-Contra Costa Transit District (“AC Transit”);
- Central Contra Costa Transit Authority (“CCCTA”);
- City and County of San Francisco, acting by and through its Municipal Transportation Agency (“SFMTA”);
- City of Fairfield, as the operator of Fairfield and Suisun Transit (“FAST”);
- City of Petaluma;
- City of Santa Rosa;
- Eastern Contra Costa Transit Authority (“ECCTA”);
- Golden Gate Bridge Highway and Transportation District (“GGBHTD”);
- Livermore/Amador Valley Transit Authority (“LAVTA”);
- Marin County Transit District;
- Napa County Transportation and Planning Agency (“NCTPA”);
- Peninsula Corridor Joint Powers Board (“Caltrain”);
- San Francisco Bay Area Rapid Transit District (“BART”);
- San Mateo County Transit District (“SamTrans”);
- Santa Clara Valley Transportation Authority (“VTA”);
- Solano County Transit;
- Sonoma County Transit;
- Sonoma-Marín Area Rail Transit (“SMART”);
- Vacaville City Coach (“COACH”);
- Water Emergency Transportation Authority (“WETA” or “SF Bay Ferry”); and
- Any joint powers agency formed for the purpose of overseeing the development and operation of the next-generation Clipper[®] system by MTC and/or any of the agencies listed herein.

APPENDIX D-1, INSURANCE REQUIREMENTS

Minimum Insurance Coverages. Consultant shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under its Agreement with MTC, 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.
—	<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 Consultant’s employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers’ Compensation & Employer’s Liability may be waived, if and only for as long as Consultant is a sole proprietor or a corporation with stock 100% owned by officers with no employees.
—	<u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of Consultant and Consultant’s officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC. MTC, FTA, FHWA and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Consultant’s operations.
—	<u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by Consultant and Consultant’s officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.
—	<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.
—	<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. 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 Consultant and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the Consultant. No contract or agreement between Consultant and any subcontractor/consultant shall relieve Consultant of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by

	<p>Consultant and any subcontractor/consultant working on behalf of Consultant on the project.</p>
—	<p><u>Property Insurance.</u> Property Insurance covering Consultant’s own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.</p>
<p>MTC, FTA, FHWA, and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Consultant’s operations.</p> <p>All policies will be issued by insurers acceptable to MTC, generally with a Best’s Rating of A-VIII or better.</p> <p>Consultant’s obligation to provide the insurance described herein may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.</p> <p>Consultant shall be responsible for payment of any deductible or retention on Consultant’s policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.</p> <p>In the event that MTC seeks coverage as an additional insured under any Consultant insurance policy that contains a deductible or self-insured retention, Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Consultant, subconsultant, subcontractor, or any of their employees, officers or directors, even if Consultant or subconsultant is not a named defendant in the lawsuit.</p> <p>If any insurance specified above is written on a “Claims-Made” (rather than an “occurrence”) basis, then in addition to the coverage requirements above, Consultant shall:</p> <ol style="list-style-type: none"> 1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of its Agreement with MTC or the beginning of any work under such Agreement; 2. Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and 3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the work. <p>All insurance specified above shall remain in force until all work or services to be performed are</p>	

satisfactorily completed, all of Consultant’s personnel, subcontractors, and equipment have been removed from MTC’s property, and the work or services have been formally accepted. Consultant must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of its Agreement with MTC.

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

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

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 RFP, compliance with the insurance requirements will be assumed.

APPENDIX E – IRAN CONTRACTING ACT of 2010
(Public Contract Code Section 2200 et seq.)

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

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

OPTION #1 - CERTIFICATION

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

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

OPTION #2 – EXEMPTION

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

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

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

APPENDIX F, FEDERAL REQUIREMENTS

Federally-required contract provisions are listed below and in *Appendix D, MTC's Standard Consultant Agreement*, in Attachment H and its subparts. In addition, the federal requirements in this *Appendix F* shall apply to any contract resulting from this RFP.

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

MTC will establish Disadvantaged Business Enterprise (DBE) goals upon issuance of each Task Order entered into as a result of this RFP.

1. TERMS AS USED IN THIS DOCUMENT

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

2. AUTHORITY AND RESPONSIBILITY

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

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on a Task Order resultant of the contract issued under this RFP, Attachment H-1, "Local Agency Consultant DBE Commitment" form and Attachment H-2, "Local Agency Consultant DBE Information" form of *Appendix D, MTC Standard Consultant Contract* shall be required to completed prior to Task Order issuance. In order for a Proposer to be considered responsible and responsive, the Proposer must make good faith efforts to meet the goal established for

each of the Task Orders issued under the contract resultant of this RFP. If the goal is not met, the Proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal, and all DBE participation shall be collected and reported.

Attachment H-1, "Local Agency Consultant DBE Commitment" form and Attachment H-2, "Local Agency Consultant DBE Information" form of *Appendix D, MTC Standard Consultant Contract* shall be completed with each Task Order issued under the contract resultant of this RFP. The purpose of the forms is to collect data required under 49 CFR 26. These forms collect all DBE participation. Even if no DBE participation will be reported, the successful Proposer must execute and return the forms.

4. DBE PARTICIPATION GENERAL INFORMATION

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

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

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program web site at: <http://www.dot.ca.gov/hq/bep/>.
 - Click on the link in the left menu titled *Disadvantaged Business Enterprise*
 - Click on *Search for a DBE Firm* link
 - Click on *Access to the DBE Query Form* located on the first line in the center of the page
 - Searches can be performed by one or more criteria
 - Follow instructions on the screen
- C. How to Obtain a List of Certified DBEs without Internet Access: DBE Directory - If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered from the Caltrans Publications Unit at (916) 263-0822, 1900 Royal Oaks Drive, Sacramento, CA 95815-3800.

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

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

procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

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

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

Instructions for Certification:

1. By signing and submitting this proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, MTC 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 Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge

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

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

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transaction**

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

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

Date

(signature of authorized official)

(type/print name and title)

APPENDIX F-2, CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

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

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

Executed this _____ day of _____, 2014.

By:

(signature of authorized official)

(title of authorized official)

APPENDIX F-3, DBE INFORMATION – GOOD FAITH EFFORTS

Federal-aid Project No. TBD 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.