ATTACHMENT 1

MASTER FUNDING AGREEMENT

BETWEEN THE METROPOLITAN TRANSPORTATION COMMISSION

AND

THE CITY OF SANTA ROSA

PLANNING, PROGRAMMING,
TRANSPORTATION, TRANSIT, LAND USE OR OTHER PROJECTS

FOR

FISCAL YEARS 2018-19 through 2027-28

TABLE OF CONTENTS

ARTICLE		PAGE
1.0	GENERAL	1
2.0	INTERAGENCY AGREEMENT ADMINISTRATION	2
3.0	FUNDING	2
4.0	TERM	2
5.0	PAYMENT	3
6.0	DELAYS AND FAILURE TO PERFORM	3
7.0	AMENDMENTS	3
8.0	TERMINATION	4
9.0	USE OF THIRD PARTY CONTRACTS	4
10.0	INDEMNIFICATION	4
11.0	LAWS AND REGULATIONS	4
12.0	RECORDS	5
13.0	AUDITS	5
14.0	SUBCONTRACTS	5
15.0	PROHIBITED INTERESTS	6
16.0	ORGANIZATIONAL CONFLICTS OF INTEREST	7
17.0	CHOICE OF LAW	7
18.0	PARTIAL INVALIDITY	8
19.0	NO THIRD PARTY BENEFICIARIES	8
20.0	ORDER OF PRECEDENCE; EXHIBITS	8
EXHIBIT A, FORM OF SUPPLEMENT		9
EXHIBIT B-1, ADDITIONAL TERMS AND CONDITIONS (GENERAL)		11
EXHIBIT B-2, ADDITIONAL TERMS AND CONDITIONS (FEDERALLY REQUIRED CLAUSES)		12
CERTIFICATION OF RESTRICTIONS ON LOBBYING		20
EXHIBIT B-3, ADDITIONAL TERMS AND CONDITIONS (STATE REQUIRED CLAUSES)		21
EXHIBIT B-4, ADDITIONAL TERMS AND CONDITIONS (PREVAILING WAGE RATES, APPRENTICESHIPS, AND PAYROLL RECORDS, NON FEDERALLY FUNDED AGREEMENTS)		34
EXHIBIT B-5, ADDITIONAL TERMS AND CONDITIONS (PREVAILING WAGE RATES, APPRENTICESHIPS, AND PAYROLL RECORDS, FEDERALLY FUNDED AGREEMENTS)		35
EXHIBIT B-6, ADDITIONAL TERMS AND CONDITIONS (RM1, RM2, AB 1171)		40
EXHIBIT B-7, ADDITIONAL TERMS AND CONDITIONS (STP)		47
EXHIBIT C, FORM 10-C		51

MASTER FUNDING AGREEMENT
BETWEEN METROPOLITAN TRANSPORTATION COMMISSION
AND THE CITY OF SANTA ROSA
FOR PLANNING, PROGRAMMING,
TRANSPORTATION, TRANSIT, LAND USE AND OTHER PROJECTS

This Master Funding Agreement, effective as of September 1, 2018 (this "Master Funding Agreement" or "Agreement"), is entered into by and between the Metropolitan Transportation Commission (hereafter "MTC"), a regional transportation planning agency established pursuant to California Government Code sections 66500 *et seq*., and the City of Santa Rosa, a municipal corporation (hereafter "AGENCY"). MTC and AGENCY are collectively referred to herein as "the Parties."

WITNESSETH

WHEREAS, MTC has been designated as the Metropolitan Planning Organization ("MPO" - federal) and the Regional Transportation Planning Agency ("RTPA" - state) for the San Francisco Bay Region; and

WHEREAS, MTC from time to time expects to provide funds available to it as the MPO, the RTPA, or otherwise, to AGENCY; and

WHEREAS, it is expected that these funds will be used for planning, programming, transportation, transit, land use or other projects relevant to MTC or its statutory purposes (the "Project" or "Projects"); and

WHEREAS, the Parties wish to set forth the terms and conditions under which MTC may from time to time provide funding to AGENCY for the period from September 1, 2018 through June 30, 2028; and

WHEREAS, before MTC will make Project funds available under this Agreement, MTC and AGENCY will enter into a Supplement to this Master Funding Agreement in substantially the same form as Exhibit A to this Agreement ("Supplement" or "Project Supplement") to establish the terms and conditions governing each Project.

NOW, THEREFORE, the Parties hereto agree as follows:

1.0 GENERAL

This Master Funding Agreement shall have no force and effect with respect to a Project or any portion thereof unless and until a Supplement in substantially the same form as Exhibit A to this

Agreement has been fully executed by both MTC and AGENCY with respect to each Project funded under this Agreement. Each Project Supplement shall include the following:

a. Project description or scope of work;
b. Maximum Project funding;
c. The terms and conditions reflected in Exhibits B-1 through B-7 to this Agreement, when required;
d. Additional covenants, conditions, restrictions or reporting requirements, when required or desired;
e. Identification of MTC and AGENCY Project managers; and
f. The estimated Project budget and payment milestones.

Upon execution by MTC and AGENCY of a Project Supplement, AGENCY shall complete the particular Project and MTC shall fund the Project in accordance with the terms of this Agreement and the Project Supplement.

2.0 INTERAGENCY AGREEMENT ADMINISTRATION

The administration of this Agreement shall be performed by MTC staff. Day-to-day management of individual Projects shall be assigned to the AGENCY and MTC Project Managers identified in the particular Project Supplement.

3.0 FUNDING

A. Funding to AGENCY shall be the sum of the funding payable to AGENCY under each Supplement.

B. AGENCY and MTC jointly agree to exert their best efforts to manage each Project in such a way that prevents costs from exceeding estimated Project budgets.

C. AGENCY travel expenses and per diem rates shall not exceed the rates specified by the State of California Department of Personnel Administration for similar employees (i.e. non-representative employees).

4.0 TERM

The term of this Agreement shall commence on September 1, 2018 and end on June 30, 2028 ("Term"), unless sooner terminated as provided herein. The Term may be extended by mutual written agreement of both Parties prior to the expiration of the Term.

5.0 PAYMENT

AGENCY shall submit Project invoices to MTC in the format and at the frequency provided in the respective Project Supplement. Payment shall be contingent upon AGENCY's satisfactory completion of the Project or Project milestones. Requests for reimbursement of travel expenses shall include supporting documentation. Invoices shall be reviewed and approved by MTC as soon as practicable, which approval shall not be unreasonably withheld. MTC shall promptly notify AGENCY in the event payment of all or part of an invoice is not approved and the reasons therefor. Upon such notice, the Parties shall promptly endeavor to resolve the issue preventing payment. Invoices shall be paid by MTC within thirty (30) days of receipt of invoice or approval of payment previously withheld, which shall be subject to the review and approval of MTC's Project Manager or a designated representative. AGENCY may submit invoices via email to MTC at acctpay@mtc.ca.gov or by U.S. Mail as follows:

Attention: Accounting Section
Metropolitan Transportation Commission
Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA, 94105

6.0 DELAYS AND FAILURE TO PERFORM

Whenever the AGENCY encounters any difficulty that will significantly delay timely performance of work, the AGENCY shall notify MTC in writing. The parties agree to cooperate to work out a mutually satisfactory course of action.

If MTC determines that (a) the AGENCY's failure to complete a product on a timely basis is due to causes solely within the AGENCY's control; and/or (b) the AGENCY has failed to reasonably mitigate such failure, MTC may impose such sanctions as it may determine appropriate. Sanctions may include withholding of commensurate payment due under this Agreement until compliance is achieved.

7.0 AMENDMENTS

This Agreement or any Supplement may be amended by agreement of the Parties. All such amendments shall be in writing and executed by the authorized representatives of each Party. The MTC Project Manager is not an authorized representative.

8.0 TERMINATION

Either party may terminate this Agreement, or applicable Supplement(s), at any time without cause upon ninety (90) days' written notice to the other party. Upon termination, AGENCY shall invoice MTC for an amount representing the actual cost of work performed up to the date of termination for which AGENCY has not been previously reimbursed. In no event shall the maximum funding payable under this Agreement, as it may be adjusted by a written amendment, be exceeded. Upon payment of the amount due, MTC shall be under no further obligation to AGENCY, monetarily or otherwise. Additionally, if a party fails to perform as specified in this Agreement, the other party may terminate all or part this Agreement for default. Termination shall be effected by serving a thirty (30) day advance written notice of termination on the defaulting party, setting forth the manner in which party is in default. If the defaulting party does not cure the breach or describe to the other party's satisfaction a plan for curing the breach within the thirty (30) day period, the non-defaulting party may terminate this Agreement for cause. In the event of such termination for cause, defaulting party will be entitled only to those costs incurred for already completed work, not to exceed the maximum amount payable under this Agreement for such work, however, in no event shall the non-defaulting party be required to reimburse the defaulting party for any costs incurred for work causing or contributing to the default.

9.0 USE OF THIRD PARTY CONTRACTS

Subject to the terms of this Agreement and the applicable Project Supplement, AGENCY may subcontract or subvene funds to local agencies, consultants or contractors for to perform work or complete Projects pursuant to Project Supplements, without the prior written consent of MTC, provided AGENCY complies with any other applicable requirements of this Agreement and the applicable Supplement. hereto, and applicable federal and state requirements.

10.0 INDEMNIFICATION

Except where prohibited by law, AGENCY shall indemnify, defend, and hold harmless MTC, its Commissioners, representatives, agents and employees from and against all claims, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect, including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of AGENCY, its officers, employees or agents, or subconsultants or any of them in connection with this Agreement.

11.0 LAWS AND REGULATIONS

AGENCY shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, State of California (State) and/or a local government, and of any agency

thereof, including but not limited to the California Department of Transportation (Caltrans) Local Assistance Procedures Manual, as they exist as of the effective date of this Agreement and as they may be amended in the future, which relate to or in any manner affect the performance of this Agreement or Supplement(s).

12.0 RECORDS

AGENCY 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. AGENCY further agrees to keep all records pertaining to all Project(s) for audit purposes for a minimum of: (a) three (3) years following final payment to AGENCY, (b) four (4) years following the last fiscal year under the Agreement; or (c) completion of any litigation, claim or audit, whichever is longest.

13.0 AUDITS

AGENCY shall maintain and permit access to AGENCY's books, records, accounts, and any and all work products, materials, and other data related to this Agreement to MTC and MTC's authorized representatives during all reasonable times during the Term and for the periods specified in Article 12 for the purpose of making an audit, examination, excerpt and transcription. Such requirements shall extend to books, records, accounts, and any and all work products, materials, and other data of AGENCY's subconsultants, if any. If applicable, should MTC request access to the construction site and related field operations, MTC shall provide reasonable notice to AGENCY, and AGENCY shall provide access as it deems reasonable and safe, subject to the rights of the property owner if such owner is not AGENCY.

AGENCY further agrees to include in all its subcontracts hereunder exceeding $25,000 a provision to the effect that the subconsultant agrees that MTC or any of MTC's duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subconsultant for the term specified above. "Subconsultant" is defined in Article 14.0 Subcontracts, below.

14.0 SUBCONTRACTS

A. For purposes of this Agreement, "subconsultant" shall mean any consultant or contractor under contract with the AGENCY to perform Project work. Any subconsultants must be engaged under written contract with AGENCY with provisions allowing AGENCY to comply with all requirements of this Agreement. Failure of a subconsultant to provide any insurance required under

this Agreement shall be at the risk of AGENCY. MTC's Project Manager shall be notified in writing of any substitution or addition of subconsultants.

For any Project funded by FTA, FHWA or Caltrans, AGENCY shall complete Form 10-C, as may be revised by Caltrans from time to time, within thirty (30) days of executing an agreement with a subconsultant and submit it to MTC's Project Manager. The current version of Form 10-C is attached hereto as Exhibit C. MTC will not process payment of any invoice under the applicable Supplement relating to work by a subconsultant unless AGENCY shall have submitted to MTC a Form 10-C with respect to its contract with such subconsultant.

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

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

15.0 PROHIBITED INTERESTS

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., 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, AGENCY further covenants that it has made a complete disclosure to MTC of all facts of which AGENCY is aware upon due inquiry bearing upon any possible interest, direct or indirect, that 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.

16.0 ORGANIZATIONAL CONFLICTS OF INTEREST

AGENCY shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed by subconsultants 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 or AGENCY; 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.

AGENCY shall not engage the services of any subconsultant on any work related to this Agreement if the subconsultant, or any employee of the subconsultant, 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 AGENCY becomes aware of an organizational conflict of interest in connection with the work performed by a subconsultant hereunder, AGENCY shall immediately provide MTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest. AGENCY's written notice will also describe 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 performance of any work hereunder by a subconsultant , MTC shall similarly notify AGENCY. In the event a conflict is presented, whether disclosed by AGENCY or its subconsultant, or discovered by MTC, MTC will consider the conflict presented and any alternatives proposed and meet with AGENCY 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 AGENCY or its subconsultant or subcontractor to damages incurred by MTC in addressing organizational conflicts that arise out of work performed by such subconsultant or subcontractor, or to termination of this Agreement for breach.

17.0 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.

18.0 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.

19.0 NO THIRD PARTY BENEFICIARIES

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

20.0 ORDER OF PRECEDENCE; EXHIBITS

The exhibits to this Agreement are incorporated and made part of this Agreement. In the event of a conflict in the provisions of this Agreement, any Supplement hereto, or the exhibits hereto incorporated by reference into such Supplement, the following order of priority shall be used in resolving such conflict: the applicable Supplement shall have first priority, then the exhibits incorporated into such Supplement, then this Agreement.

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

METROPOLITAN TRANSPORTATION COMMISSION

Steve Heminger, Executive Director

CITY OF SANTA ROSA

Chris Coursey, Mayor

Approved as to Form:

Angela Cardenas, Assistant City Attorney
Name, Title

Clerk Attestation

Daisy Beery, City Clerk
Name, Title

EXHIBIT A

FORM OF SUPPLEMENT

SUPPLEMENT ONE TO MASTER FUNDING AGREEMENT

This Supplement Number 1 to Master Funding Agreement ("Supplement or "Project Supplement") is entered into this _____day of _____, 2018, by and between the Metropolitan Transportation Commission, a regional transportation planning agency established pursuant to California Government Code sections 66500 *et seq* (hereafter "MTC") and the City of Santa Rosa, a municipal corporation (hereafter "AGENCY") and supplements the Master Funding Agreement, dated _____, 2018, by and between MTC and AGENCY.

Pursuant to this Supplement, MTC agrees to provide an amount not to exceed xxxx dollars ($xxx,xxx) in [describe funding source] to AGENCY to fund the [brief description or title of project] (as more fully described in Annex I hereto, the "Project"). The estimated budget and payment milestones for the Project are attached as Annex II hereto.

MTC will reimburse AGENCY for its actual eligible costs incurred for completed Project milestones or deliverables described in Annex II.

Project work will commence [date], and be completed no later than March 31, 2021.

The exhibits to the Master Funding Agreement that are selected below are attached to this Supplement and incorporated herein by this reference:

- ☐ Exhibit B-1, Additional Terms and Conditions (General), Paragraph A
- ☐ Exhibit B-1, Additional Terms and Conditions (General), Paragraph B
- ☐ Exhibit B-2, Additional Terms and Conditions (Federally Required Clauses)
- ☐ Exhibit B-3, Additional Terms and Conditions (State Required Clauses)
- ☐ Exhibit B-4, Additional Terms and Conditions (Prevailing Wage Rates, Apprenticeships, and Payroll Records, Non-Federally-Funded Agreements)
- ☐ Exhibit B-5, Additional Terms and Conditions (Prevailing Wage Rates, Apprenticeships, and Payroll Records, Federally-Funded Agreements)
- ☐ Exhibit B-6, Additional Terms and Conditions (Regional Toll Funds including RM1, RM2, and AB1171)
- ☐ Exhibit B-7, Additional Terms and Conditions (Regional Discretionary Federal Funds including STP and CMAQ)

[Insert any additional covenants, conditions, restrictions or reporting requirements that apply to the Project scope of work or funding MTC is providing to AGENCY.]

[Describe/attach any MTC or AGENCY resolutions, authorizations or approvals, or any other key documents, relevant to the applicable Project scope of work or funding source MTC is providing to AGENCY.]

The MTC Project Manager for the Project is Ada Chan, (415) 820-7958, achan@bayareametro.gov. The AGENCY Project Manager for the Project is Patrick Streeter, (707) 543-4323, pstreeter@srcity.org.

This Supplement is supplemental to the Master Funding Agreement. All terms and conditions of the Master Funding Agreement, as may be amended, remain unchanged.

Capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Master Funding Agreement.

METROPOLITAN TRANSPORTATION COMMISSION

Steve Heminger, Executive Director

CITY OF SANTA ROSA

Chris Coursey, Mayor

Approved as to Form:

Name, Title

Clerk Attestation

Name, Title

J:\CONTRACT\Contracts-New\Master Funding Agreements\City of Santa Rosa\Master Agreement.MTC.Santa Rosa final.docx

EXHIBIT B-1
ADDITIONAL TERMS AND CONDITIONS (GENERAL)

A. INSURANCE REQUIREMENTS

AGENCY shall, at its own expense, obtain and maintain (and/or cause its subconsultant(s) to obtain and maintain, as applicable) the types of insurance and financial security listed (if any) in the applicable attachment or exhibit to the relevant Supplement 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 such Supplement, and in effect at all times for the duration of such Supplement. All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better, or as otherwise specified in the applicable Supplement. Notwithstanding anything to the contrary, AGENCY may satisfy the insurance requirements herein utilizing self-insurance providing equivalent coverage.

B. CLAIMS OR DISPUTES

Unless otherwise directed in writing by MTC, AGENCY shall continue performance under this Agreement while any matters in dispute are being resolved. Further, MTC shall pay AGENCY for any undisputed work performed by AGENCY prior to or during the resolution of the matters in dispute. In the event there is a dispute concerning the interpretation of this Agreement or any aspect of the Project that the Project Managers are unable to resolve, the Project Manager for either MTC or AGENCY may request that an ad hoc Dispute Resolution Committee ("DRC") be convened to resolve the dispute. The DRC shall consist of two members, one appointed by the MTC Executive Director and the other appointed by the Chief Executive Officer of AGENCY. The responsibility of chairing each ad hoc DRC shall alternate between the agencies, beginning with MTC. Further, disputes between MTC and AGENCY that cannot be resolved by the DRC may be submitted to alternative dispute resolution, as agreed to by the parties. Fees and expenses of the mediator will be borne equally.

EXHIBIT B-2
ADDITIONAL TERMS AND CONDITIONS
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 VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e); 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, for FTA-funded projects, 49 U.S.C. § 5332 and any implementing requirements that FTA may issue. AGENCY agrees that it will not, on the grounds of race, religious creed, color, national origin, age, physical disability or sex, discriminate or permit discrimination against any employee or applicant for employment.

2. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

It is the policy of MTC and the U.S. Department of Transportation to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which disadvantaged business enterprises, as defined in 49 Code of Federal Regulations Part 26, can compete fairly for contracts and subcontracts relating to MTC's procurement and professional services activities.

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

3. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

AGENCY 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). For FTA-funded projects, AGENCY further agrees to comply with the current FTA Circular 4702.1A, "Nondiscrimination Guidelines for FTA Recipients," the U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, and the U.S. DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons.

4. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

AGENCY agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 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

AGENCY 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

AGENCY 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, or in 2 Code of Federal Regulations Parts 200 and 1201, as applicable. In addition, all subcontracts must be in accordance with 2 Code of Federal Regulations Part 200, as applicable, MTC's funding agreement with DOT and any regulations, guidelines and circulars of DOT, applicable as a result of such funding agreement. Further, all subconsultants shall agree to comply with 48 Code of Federal Regulations, Chapter 1, Part 31.

7. 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 the applicable Supplement; and (b) any rights of copyright to which MTC or AGENCY purchases ownership under the applicable Supplement.

8. IDENTIFICATION OF DOCUMENTS

All reports and other documents completed as part of the applicable Supplement 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: **[select appropriate agency]** Federal Transit Administration/Federal Highway Administration, U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation."

9. AUDITS

AGENCY 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 AGENCY's books, records, accounts, and any and all work products, materials, and other data relevant to the Supplement, for the purpose of making an audit, examination, excerpt and transcription during the term of the applicable Supplement and for the period specified in Article 14. AGENCY 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 the applicable Supplement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, AGENCY agrees to reimburse MTC for those costs within sixty (60) days of written notification by MTC.

AGENCY further agrees to include in all its subcontracts hereunder exceeding $25,000 a provision to the effect that the subrecipient 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 subrecipient for the term specified above.

10. FLY AMERICA REQUIREMENTS.

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

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

A. AGENCY 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 Supplement, AGENCY 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 Supplement or the FTA assisted project for which work is being performed under the Supplement. In addition to other penalties that may be applicable, AGENCY 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 AGENCY to the extent the Federal Government deems appropriate.

B. AGENCY 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 Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on AGENCY, to the extent the Federal Government deems appropriate.

C. AGENCY 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 subconsultant who will be subject to the provisions.

12. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

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

13. DEBARMENT

This Article is only applicable if the Supplement exceeds $25,000. AGENCY certifies that neither it, nor any of its participants, principals or subrecipients is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 2 CFR Parts 180 and 1200, by any Federal agency or department.

14. CLEAN AIR AND WATER POLLUTION ACTS

This Article is only applicable if the Supplement exceeds $100,000. AGENCY 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).

15. LOBBYING

This Article is only applicable if the Supplement exceeds $100,000. AGENCY 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.

Attachments:
Attachment A – Federally Required Certifications (AGENCY shall either provide these certifications to MTC or shall provide copies of such certifications AGENCY has independently made to the Federal Government.)

EXHIBIT B-2
Attachment A
Federally Required Certifications

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Instructions for Certification:

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, MTC may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to MTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact MTC for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by MTC.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Services 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 is normally possessed by a prudent person in the ordinary course of business dealings.

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

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

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. 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)

CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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

Executed this _____ day of _____ , 20__

By:

_____
(signature of authorized official)

_____
(title of authorized official)

EXHIBIT B-3
ADDITIONAL TERMS AND CONDITIONS
STATE REQUIRED CLAUSES

1) Attachment A – Fair Employment Practices Addendum
2) Attachment B – Nondiscrimination Assurances
    a. Appendix A – Clauses to be inserted in every agreement subject to the ACT, as defined in Attachment B of this Exhibit and REGULATIONS, also as defined in Attachment B
    b. Appendix B – To be included as covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein
    c. Appendix C – To be included for subsequent transfer of real property acquired or improved under federal-aid Program
    d. Appendix D – To be included for the construction or use of or access to space on, over, or under real property acquired or improved under the federal-aid Program
3) Attachment C – State Department of Transportation Requirements

EXHIBIT B-3
ATTACHMENT A

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of the Supplement, AGENCY shall not discriminate against any employee for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g. cancer), age (over 40), marital status, and denial of family care leave. AGENCY 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. AGENCY 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. AGENCY and its consultants 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 the Supplement by reference and made a part hereof as if set forth in full. Each of the AGENCY'S consultants 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. AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under the Supplement.

4. AGENCY 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 the applicable Supplement.

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

EXHIBIT B-3

ATTACHMENT B

NONDISCRIMINATION ASSURANCES

AGENCY 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 - 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 AGENCY receives federal financial assistance from the Federal Department of Transportation. AGENCY HEREBY GIVES ASSURANCE THAT AGENCY shall promptly take any measures necessary to effectuate the applicable Supplement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

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

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

9. That AGENCY 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 AGENCY, 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 AGENCY 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. AGENCY 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. AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination 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 the Supplement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of the Supplement. 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 AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

APPENDIX A TO ATTACHMENT B

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

(1) Compliance with Regulations: AGENCY 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 the Supplement.

(2) Nondiscrimination: AGENCY, with regard to the work performed by it under the Supplement, 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. AGENCY 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 AGENCY 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 AGENCY of the AGENCY's obligations under the Supplement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

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

(5) Sanctions for Noncompliance: In the event of AGENCY's noncompliance with the nondiscrimination provisions of the Supplement, 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 AGENCY 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: AGENCY shall include the provisions of paragraphs (1) through (5) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

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

APPENDIX B TO ATTACHMENT B To be included as covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein)

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 AGENCY 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 AGENCY 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 AGENCY 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 AGENCY, its successors arid assigns.

AGENCY, 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 AGENCY 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 B (To be included for subsequent transfer of real property acquired or improved under federal-aid Program)

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by AGENCY, pursuant to the provisions of Assurance 7(a) of Exhibit B-3, Attachment B, Non Discrimination Assurances. .

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, AGENCY 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, AGENCY 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 AGENCY 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 B Appendix D – (To be included for the construction or use of or access to space on, over, or under real property acquired or improved under the federal-aid Program)

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by AGENCY, pursuant to the provisions of Assurance 7 (b) of Exhibit B-3, Attachment B, Non Discrimination Assurances. .

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, AGENCY 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, AGENCY 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 AGENCY, 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.

EXHIBIT B-3, ATTACHMENT C
STATE DEPARTMENT OF TRANSPORTATION REQUIREMENTS

Caltrans Non – Discrimination

A. In the performance of work undertaken pursuant to the Supplement, AGENCY shall not, and shall affirmatively require that its consultants 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. AGENCY shall ensure, and shall require that its consultants and/or subrecipients shall ensure, that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. AGENCY shall comply, and ensure that its consultants and/or subrecipients shall comply, with the provisions of the Fair Employment and Housing Act (Government Code sections 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, sections 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code sections 12900 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into the Supplement by reference and made a part hereof as if set forth in full.

C. Each of AGENCY's consultants 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. AGENCY shall include the non-discrimination and compliance provisions hereof in all contracts to perform work under the Supplement.

D. AGENCY 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 the Supplement by this reference. Wherever the term "Contractor" appears therein, it shall mean AGENCY.

E. AGENCY shall permit, and shall require that its consultants 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.

EXHIBIT B-4
ADDITIONAL TERMS AND CONDITIONS
PREVAILING WAGE RATES, APPRENTICESHIPS, AND PAYROLL RECORDS
NON FEDERALLY FUNDED AGREEMENTS

AGENCY's contractor(s) and all subcontractors shall comply with applicable sections of the California Labor Code and regulations promulgated thereunder (including without limitation, sections 1720 *et seq*. and Title 8 of the California Code of Regulations sections 16000 *et seq*.) governing the payment of prevailing wages, as determined by the Director of the California Department of Industrial Relations, in regards to work performed and/or funded under this Supplement. In particular, AGENCY's attention is drawn to Labor Code sections 1771 (payment of prevailing wage rate), 1775 (penalty for non-payment), 1776 (payroll records), and 1777.5 (use of apprentices). AGENCY's contractor(s) and all subcontractors, to the extent the work of such contractor(s) and subcontractors under this Agreement are subject to California Labor Code section 1720 *et seq*., shall be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 and shall furnish electronic certified payroll records directly to the Labor Commissioner through the internet portal of the Division of Labor Standards Enforcement. Per Master Funding Agreement Article 12.0, Records and 13.0 Audits, MTC reserves the right to request copies of the certified payroll records.

EXHIBIT B-5
ADDITIONAL TERMS AND CONDITIONS
PREVAILING WAGE RATES, APPRENTICESHIPS, AND PAYROLL RECORDS
FEDERALLY FUNDED AGREEMENTS

The Additional Federal Clauses Applicable to Public Works included in Attachment A, attached hereto and incorporated herein by this reference, and the Davis-Bacon prevailing wages apply to work performed and/or funded under the Supplement. AGENCY agrees that AGENCY will require its contractor(s) and all subcontractors will pay the higher of (i) the applicable wage set forth in Federal Wage Determinations, and (ii) the applicable California prevailing rate. Certified payroll records in the form set forth in the Public Works Payroll Reporting Form, as found at https://www.dol.gov/whd/forms/wh347.pdf, shall be prepared or collected from its contractor(s) and all subconsultant(s) on a weekly basis by the AGENCY. Per Master Funding Agreement Article 12.0, Records and 13.0 Audits, MTC reserves the right to request copies of the certified payroll records. MTC may withhold payment if the certified payrolls to be submitted by AGENCY pursuant to pursuant to MTC's request, are not current.

EXHIBIT B-5
Attachment A
ADDITIONAL FEDERAL CLAUSES APPLICABLE TO PUBLIC WORKS

1. Buy America
2. Davis-Bacon Act
3. Contract Work Hours and Safety Standards Act
4. Copeland Anti-Kickback Act
5. Prompt Payment of Funds Withheld to Subcontractors

1. Buy America Requirements

Buy America – Attention is directed to the "Buy America" requirements of the surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Sections 1041(a) and 1048(a), and the regulations adopted pursuant thereto. In conformance with the law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and other coating that protects or enhances the value of steel or iron materials shall be considered a manufacturing process subject to the "Buy America" requirements. A Certificate of Compliance shall be furnished for steel and iron materials. The certificates shall specifically certify that all manufacturing processes for the materials occurred in the United States, except for the above exceptions.

The requirements imposed on AGENCY by the law and regulations do not prevent a minimal use of foreign steel and iron materials if the total combined cost of the materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. The AGENCY or its contractor(s) shall furnish the Engineer acceptable documentation of the quantity and value of the foreign steel and iron prior to incorporation the materials into the work.

Certification requirement for procurement of steel, iron, or manufactured products.

The AGENCY hereby certifies that all manufacturing process for steel and iron materials occurred in the United States, except for the above exceptions.

Signature: _____

Name and Title: _____

Company Name: _____

Date: _____

2. DAVIS-BACON ACT AND COPELAND ANTI-KICKBACK ACTS

For all prime construction, alteration or repair contracts in excess of $2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

3. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (Construction)

A. For all contracts in excess of $100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

B. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in

excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

C. The applicable federal agency shall upon its own action, or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

D. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

3. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Contract Work Hours and Safety Standards Act - (i) The AGENCY's contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the AGENCY's contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts** - The AGENCY's contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

4. COPELAND ANTI-KICKBACK ACT

Compliance with Copeland Act requirements - The AGENCY's contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

5. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS

The AGENCY shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The AGENCY's prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal regulation (49 CFR 26.29) 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 AGENCY's prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California 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 contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

EXHIBIT B-6

ADDITIONAL TERMS AND CONDITIONS (REGIONAL TOLL FUNDS INCLUDING RM1, RM2, AND AB 1171)

[Resolutions and Attachments to Exhibit B-6 are directly related to the specific project that will be funded. As such, the Resolutions and Attachments for applicable Supplement(s) will be attached to the Supplement(s) and provided to Agency for review and approval during the Supplement(s) review, approval and execution.]

Recitals

WHEREAS, Streets and Highways Code (SHC) sections 30950 *et seq.* created the Bay Area Toll Authority ("BATA") which is a public instrumentality governed by the same board as that governing MTC; and

WHEREAS, pursuant to SHC Section 31010(b), funds generated in excess of those needed to meet the toll commitments as specified by paragraph (4) of subdivision (b) of Section 188.5 of the SHC shall be available to BATA for funding projects consistent with SHC Sections 30913 and 30914; and

WHEREAS, MTC adopted Resolution No. 3434, Revised, which establishes commitments of bridge toll funds, including such AB 1171 funds, to specific projects and corridors; and

WHEREAS, on November 8, 1988, voters approved Regional Measure 1 ("RM1"), which authorized a standard auto toll of $1 on the seven state-owned toll bridges in the San Francisco Bay Area to fund various transportation projects within the region; and

WHEREAS, on March 2, 2004, voters approved Regional Measure 2 ("RM2"), increasing the toll for all vehicles on the seven state-owned toll bridges in the San Francisco Bay Area by $1.00 to fund various transportation projects within the region that have been determined to reduce congestion or to improve travel in the toll bridge corridors; and

WHEREAS, RM2 established the Regional Traffic Relief Plan and listed specific capital projects and programs and transit operating assistance as eligible to receive RM2 funding as identified in SHC Section 30914(c) and (d). The funding amounts assigned to certain of the programs and projects were subsequently revised by MTC Resolution No. 3801; and

WHEREAS, to the extent the Project is receiving RM2 funding hereunder, SHC Section 30914(c) lists the Project to which this Exhibit B-6 and the Supplement apply as one such eligible transportation project and designates AGENCY as Project sponsor; and

WHEREAS, pursuant to MTC Resolution No. 3636, MTC established procedures whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 Bridge Toll funding. A copy of MTC Resolution No. 3636 is attached hereto and incorporated herein as Attachment D, MTC Resolution No. 3636; and

WHEREAS, AGENCY submitted one or more allocation requests for RM2, AB 1171, and/or RM1 funding for the Project to which this Exhibit B-6 applies. A copy of the applicable allocation request(s) as well as AGENCY's resolution(s) approving the allocation request(s) are attached to the Supplement and incorporated herein as Attachment A, Updated Initial Project Report, and Attachment B, AGENCY Resolution(s), respectively; and

WHEREAS, by the resolution(s) attached to the Supplement and incorporated herein as Attachment A as Attachment C, MTC Resolution(s) Approving Project Request, MTC approved AGENCY's request(s) for the applicable funds for the applicable Project.

I. AGENCY AGREES

A. AGENCY agrees to perform or caused to be performed the activities described in Attachment A, Updated Initial Project Report. AGENCY will provide all necessary staffing and support resources to complete the Project as described in Attachment A, AGENCY agrees to meet all conditions listed in Attachment C, MTC Resolution(s) Approving Project Request.

B. AGENCY shall provide MTC with annual progress reports on or before each July 31 throughout the term of any applicable Supplement to this Agreement in accordance with the monitoring and reporting requirements specified in MTC Resolution No. 3636.

C. AGENCY shall submit invoices to MTC in accordance with each executed Supplement. In either case, AGENCY shall submit an invoice to MTC within thirty (30) days after the end of each period for which payment is sought covering costs for the Project activities accomplished through the end of such period, not covered by previously submitted invoices. Each invoice shall be supported by the following information: (i.) A brief narrative progress report of the activities accomplished during the invoice period, including the percentage of the contract complete and the percentage of funding expended; (ii.) the costs requested for reimbursement with RM1, RM2 and/or AB 1171 funds, as applicable; (iii.) the total costs expended for the invoice period broken down by type and source of funding; (iv.) the total RM1, RM2 and/or AB 1171 funds, as applicable received as reimbursement to date; (v.) the total costs expended for Project name to date broken down by type and source of funding; and (vi.) any additional supporting data in a form and detail required by MTC.

D. AGENCY agrees to spend RM1, RM2 and/or AB 1171 funds, as applicable, at a rate not exceeding the schedule attached to the Supplement and incorporated herein as Attachment E, Reimbursement Schedule.

E. AGENCY shall comply with and shall assure that any AGENCY consultant performing Project work with RM1, RM2 and/or AB 1171 funds, as applicable, received under this Supplement complies with MTC Resolution No. 3636, as well as the provisions of MTC's RM2 Policy Guidance contained in Attachment D, MTC Resolution No. 3636, relative to constructing, operating, and maintaining the Project.

F. AGENCY is responsible for completing the Project within cost, scope and schedule as described in Attachment A, Updated Initial Project Report, as it may be updated from time to

time. Any updates must be approved by AGENCY and MTC in writing before being incorporated into this Agreement.

G. AGENCY certifies that:

- The Project is consistent with the Regional Transportation Plan ("RTP").
- All environmental permits or clearances necessary for the Project have been or will be obtained, and the year of Project funding for the construction phase of the Project has taken into consideration the time necessary to obtain permitting approval for the Project as an operable and useable segment.
- The Project or portion thereof to be funded under this Agreement will be fully funded upon the execution of the Supplement.
- AGENCY has reviewed the Project needs and has adequate internal staffing and support resources to deliver and complete the Project within the cost, scope, and schedule set forth in the Initial Project Report, as updated, attached to the Supplement as Attachment A.
- If applicable to the Project, AGENCY is an eligible sponsor of projects in MTC Resolution No. 3434, Revised.
- If applicable, AGENCY is authorized to submit an application for RM2 funds for the Project in accordance with Streets and Highways Code section 30914(c).
- If applicable, AGENCY is authorized to submit an application for AB 1171 funds for the Project in accordance with Streets and Highways Code section 31010(b).
- The Project is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code sections 21000 *et seq.*), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations sections 15000 *et seq.*), and if relevant, the National Environmental Policy Act (NEPA) (42 USC §§ 4321 *et seq.*) and the applicable regulations thereunder.
- There is no legal impediment to AGENCY making allocation requests for RM1, RM2 and/or AB 1171 funds, as applicable.
- There is no pending or threatened litigation which might in any way adversely affect the Project or the ability of AGENCY to deliver such Project.

H. Except where prohibited by law, in addition to AGENCY's commitment under Article 10, INDEMNIFICATION, of the Master Funding Agreement, AGENCY agrees at its own cost, expense, and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, its Commissioners, representatives, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM1, RM2 and/or AB 1171 funds, as applicable, as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages.

I. If any revenues or profits from any non-governmental use of the Project are collected by AGENCY, those revenues or profits shall be used exclusively for the public transportation services for which the Project was initially approved, either for capital improvements or maintenance and operational costs, otherwise MTC is entitled to a proportionate share equal to MTC's percentage participation in the Project. MTC's percentage participation shall equal the

amount of funds allocated to Project, divided by the total Project budget as shown in Attachment E, Reimbursement Schedule, as updated from time to time, as such amount may be adjusted to reflect total project costs.

J. Project assets purchased by AGENCY with RM1, RM2 and/or AB 1171 funds, as applicable, including facilities and equipment, shall be used for the intended public transportation uses and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for their useful life, MTC shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the fair market value of the facilities and equipment at the time the public transportation uses ceased, which sum shall be paid back to MTC in the same proportion that RM1, RM2 and/or AB 1171 funds, as applicable, were originally used.

K. AGENCY shall post on both ends of the Project construction site(s), unless prohibited by the site owner if such owner is not the AGENCY, at least two signs visible to the public stating that the Project is funded with RM1, RM2 and/or AB 1171 funds, as applicable.

L. AGENCY's City Manager, , or equivalent officer, or designee, is delegated the authority to make non-substantive changes or minor amendments to the initial Project report as he/she deems appropriate; otherwise, Article 7, AMENDMENTS, of this Agreement applies.

M. AGENCY agrees to comply with the provisions of MTC Resolution No. 3636and the MTC Resolutions set forth in Attachment C, MTC Resolution(s) Approving Project Request.

II. MTC AGREES

A. MTC agrees to provide AGENCY with RM1, RM2 and/or AB 1171 funds, as applicable, within the allocation amounts in Attachment C, MTC Resolution(s) Approving Project Request and as restated in the relevant Supplement for the purpose of funding the Project as described in Attachment A.

The entire funding amount is available for reimbursement based on the schedule included in Attachment E, Reimbursement Schedule, to the Supplement. In addition, if applicable, MTC agrees to support AGENCY's allocation request from the State according to the Allocation Request Schedule provided in Attachment F to the Supplement.

In the event AGENCY does not use all RM1, RM2 and/or AB 1171 funds, as applicable, made available in a given fiscal year, those unused amounts will be available for reimbursement in subsequent year(s) for the duration of the applicable Supplement(s).

III. IT IS MUTUALLY AGREED

A. MTC and AGENCY may terminate the Supplement, in their sole discretion, for any force majeure event, including but not limited to any earthquake, flood or other natural disaster, any epidemic, blockade, rebellion, war, act of sabotage or civil commotion, fire, explosion or strike, or prolonged economic conditions affecting the ability of the Bay Area Toll Authority to make payments to bond holders who shall in all circumstances have priority to payment of funds, if such event (i) irrecoverably disrupts or renders impossible AGENCY's performance hereunder; or (ii) disrupts MTC's ability to make payments hereunder. If MTC or AGENCY so terminates the Supplement, AGENCY will be entitled to payment for non-recoverable Project costs incurred prior to the date of such termination, including but not limited to any amounts AGENCY owes to the owner of the Project construction sites, if such owner is not AGENCY, up to the maximum amount payable under the applicable Supplement(s).

B. If AGENCY or MTC fails to perform as specified in this Agreement and the applicable Supplement(s), AGENCY OR MTC may terminate the applicable Supplement(s) or this Agreement for cause. Termination shall be effected by serving a sixty (60) day advance written notice of termination on the other Party, setting forth the manner in which the other Party is in default. If AGENCY or MTC does not cure the breach or describe to AGENCY'S or MTC's satisfaction a plan for curing the breach within the sixty (60) day period, the non-breaching party may terminate this Agreement or the applicable Supplement(s) for cause. In the event of such termination for cause, AGENCY will be entitled only to those costs incurred for the completed Project work, not to exceed the maximum amount payable under the applicable Supplement(s) for such Project work, however, in no event shall MTC be required to reimburse AGENCY for any costs incurred for work causing or contributing to the default.

C. If the Project is cancelled, suspended indefinitely, or otherwise not completed for any reason, AGENCY shall repay MTC any RM1, RM2 and/or AB 1171 funds, as applicable, expended that exceed MTC's proportionate share of eligible costs for the Project.

D. Upon completion of the Project, AGENCY will properly account for all Project costs incurred.

E. The applicable Supplement(s) shall terminate upon closeout of the Project in accordance with Policies and Procedures in MTC Resolution No. 3636 or on the termination date, if any, set forth in the Supplement, whichever is sooner.

F. The terms and conditions of the applicable Supplement(s) include the following and each is incorporated by reference herein as if fully set forth herein.

Attachment A – Updated Initial Project Report (Allocation Request)

Attachment B – AGENCY Resolution(s) (and opinion of counsel, if applicable)

Attachment C – MTC Resolution(s) Approving Project Request(s)

Attachment D – MTC Resolution No. 3636

Attachment E – Reimbursement Schedule

Attachment F – Allocation Request Schedule

EXHIBIT B-7
ADDITIONAL TERMS AND CONDITIONS (REGIONAL DISCRETIONARY FEDERAL FUNDS INCLUDING STP AND CMAQ)

1. TERMINATION

Notwithstanding Article 8.0, TERMINATION, in the Master Funding Agreement, MTC may terminate the applicable Supplement(s) without cause upon ten (10) days prior written notice. If MTC terminates the applicable Supplement(s) without cause, AGENCY shall be entitled to payment for costs incurred for incomplete deliverables, up to the maximum amount payable for each deliverable. If AGENCY fails to perform as specified in the applicable Supplement(s), MTC may terminate this Agreement for cause by written notice and AGENCY shall be entitled only to costs incurred for work product acceptable to MTC, as determined in its reasonable discretion, not to exceed the maximum amount payable under the applicable Supplement(s) for such work product.

2. RETENTION OF RECORDS

AGENCY agrees to establish and maintain an accounting system confirming to GAAP that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs.

AGENCY further agrees to keep all records pertaining to the Project audit purposes for a minimum of three (3) years following final payment to AGENCY or four (4) years following the fiscal year of the last expenditure under the applicable Supplement(s) , whichever is longer, in accordance with generally accepted accounting principles. Copies of AGENCY audits, if any, performed during Project development and at Project completion shall be forwarded to MTC no later than one hundred eighty (180) days after fiscal year end close.

3. AUDITS

Notwithstanding Article 13.0, AUDITS, in the Master Funding Agreement, AGENCY agrees to grant MTC, or any agency that provides MTC with funds for the Project, including but not limited to, the U.S. Department of Transportation, FHWA, the Comptroller General of the United States, the State, and their authorized representatives, access to AGENCY's books and records for the purpose of verifying that funds are properly accounted for and proceeds are expended in accordance with the terms of the applicable Supplement(s) . All documents shall be available for inspection during normal business hours at any time while the Project is underway and for the retention period specified in Article 4.

AGENCY further agrees to include in all its third-party contracts hereunder a provision to the effect that the contractor agrees that MTC, the U.S. Department of Transportation, FHWA, the Comptroller General of the United States, the State, or any of their duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, during normal business hours, for the term specified above. The term "contract" as used in this clause excludes agreements not exceeding $25,000.

4. LICENSE TO WORK PRODUCTS

AGENCY hereby grants to MTC an irrevocable, non-exclusive, royalty-free license to use without restriction and share with any person or entity 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") developed, prepared, or assembled by AGENCY or AGENCY's consultant(s) pursuant to the applicable Supplement(s). MTC may exercise its licenses to Work Products through sublicenses to a third party, without the approval of AGENCY or AGENCY's consultant(s). 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 the applicable Supplement(s); and (b) any rights of copyright to which AGENCY or AGENCY's consultant(s) purchase ownership under this Agreement.

5. 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, AGENCY agrees that it shall not, on the grounds of race, religious creed, color, national origin, age, physical disability or sex, discriminate or permit discrimination against any employee or applicant for employment.

6. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

It is the policy of MTC and the U.S. Department of Transportation to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which disadvantaged business enterprises, as defined in 49 Code of Federal Regulations Part 26, can compete fairly for contracts and subcontracts relating to MTC's procurement and professional services activities.

AGENCY shall not discriminate on the basis of race, color, national origin or sex in the performance of the applicable Supplement(s). AGENCY shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by AGENCY to carry out these requirements is a material breach of contract, which may result in the termination of this agreement or such other remedy as MTC deems appropriate.

7. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

AGENCY agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (47 U.S.C. § 2000(d)) and the regulations of the Department of Transportation issued thereunder (49 CFR Part 21).

8. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

AGENCY 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.

9. STATE ENERGY CONSERVATION PLAN

AGENCY 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).

10. DEBARMENT

AGENCY 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.

11. CLEAN AIR AND WATER POLLUTION ACTS

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

12. LOBBYING

AGENCY 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.

13. INDEMNIFICATION

Except where prohibited by law, notwithstanding Article 10.0, INDEMNIFICATION, in the Master Funding Agreement AGENCY shall indemnify and hold harmless MTC, Caltrans, their Commissioners, Directors, officers, agents and employees from any and all claims, demands, suits, loss, damages, injury and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of AGENCY, its officers, directors, employees, agents and contractors, or any of them, under or in connection with this Agreement; and AGENCY agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, Caltrans, their Commissioners, Directors, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments.

14. COMPLIANCE WITH LAWS

AGENCY shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state, or local government, and any agency thereof, including, but not limited to MTC, the U.S. DOT, FHWA, the State, and Caltrans, which relate to or in any manner affect the performance of this Agreement. Those laws, statutes, ordinances, rules, regulations, and procedural requirements that are imposed on MTC as agency recipient of federal or state funds are hereby in turn imposed on AGENCY (including, but not limited to, 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"), and are herein incorporated by this reference and made a part hereof.

AGENCY consultants shall agree to comply with 48 CFR, Chapter 1, Part 31, Contract Cost Principles and Procedures. In addition, AGENCY certifies that AGENCY and its efforts work under the applicable Supplement(s), including efforts of its consultants, shall comply with the requirements of the California Environmental Quality Act (CEQA), California Public Resources Code sections 21000 *et seq.* and with the California Environmental Quality Act Guidelines (14 California Code of Regulations sections 15000 *et seq.*) and the National

Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.* and the applicable regulations thereunder.

15. IDENTIFICATION OF DOCUMENTS

AGENCY shall ensure that 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 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."

EXHIBIT C
FORM 10-C

EXHIBIT 10-C A&E CONSULTANT CONTRACT REVIEWERS CHECKLIST

(Not applicable for Non-A&E Contracts)

Date: _____ **Amendment:** ☐ **District:** --sel

Agency Name: _____

Federal or State Project Number: _____

Local Agency Contract Number/Solicitation Number: _____

Consultant Name: _____

Original Contract Period: **Begin:** _____ **End:** _____

Original Contract Dollar Amount: _____ **Funding:** --Select--

No.	DESCRIPTION
A.	**PROCUREMENT PLANNING**
1	**Description of need for consultant:** _____
2	**Local agency contract administrator information**
	a Name: _____
	b Phone: _____ Email: _____
3	**Do you have a scope of work?** --select--
	a Does the scope of work include a consultant in a management support role? --select--
	b Is the schedule specified in the scope of work? --select--
4	**Independent cost estimates (23 CFR 172.7(a)(1)(v)(b))**
	a What is the total value of independent cost estimate? _____
	b What cost estimating technique was used? --select--
B.	**SOLICITATION DOCUMENTS AND ADVERTISEMENT**
1	**Consultant selection committee and conflict of interest**
	a What is the number of panel members? _____
	b Was Conflict of Interest form (EXHIBIT 10-T) signed by all? --select--
	c Was Conflict of Interest form (EXHIBIT 10-T) dated by all? --select--
2	**Does the solicitation contain a procurement schedule?** --select--
3	**Type of contract?** --select--
4	**Method of payment?** --select--
5	**Evaluation criteria and weights (EXHIBIT 10-B)**
	Were weight values assigned to criteria? --select--
6	**Procurement type?** --select--
	Length of contract (in years): _____
7	**DBE utilization goal setting (Federal-funded only)**
	a Was Exhibit 9-D submitted (Contract amount greater than $500,000)? --select--
	b Was Exhibit 10-I included in solicitation? --select--
	c What is the DBE Utilization Goal (%)? _____
	If No goal (not Zero goal), explain? _____
	d Was a Good Faith Effort (Exhibit 15-H) approved by LPA? --select--
8	**Records of publication for RFP or RFQ**
	a Was widespread publication used to advertise the RFP/RFQ (newspaper, web posting, Planetbids, etc.)? --select--
	Specify: _____

No.	DESCRIPTION	
	b How long was the advertisement period (in days)?	
9	**Records of response to solicitation**	
	a How many consultants responded to this solicitation?	
	b Does your agency have a proposal responsiveness checklist?	--select--
	c Were records of response documented (e.g. log sheet, copies of time-stamped envelops, other)?	--select--
	Specify:	
C.	**EVALUATION AND SELECTION**	
1	**Documentation of consultant selection**	
	a How many consultants were evaluated?	
	b Were evaluation criteria the same as in solicitation?	--select--
	c Original score sheets and final rankings	
	1. How many score sheets were signed by all?	
	2. How many score sheets were dated?	
	d Was Exhibit 10-O1 included in proposal (Federal funded only)?	--select--
	e Was Exhibit 10-U submitted if there is a consultant in a management role (if applicable)?	--select--
2	**Develop top ranked consultants and notify all interviewees**	
	a Did you notify all candidates of their ranking?	--select--
	b Did you conduct oral interviews?	--select--
3	**Cost proposal**	
	a Is cost proposal in Exhibit 10-H format or equivalent complete and in the correct form based on the method of payment?	--select--
	b Payment Method: --select--	
	c Is direct labor cost proposal broken down by job classifications and types of costs and/or rates?	--select--
	d Is the ICR for current fiscal year?	--select--
	e Are key personnel identified?	--select--
	f Are "other direct cost" itemized by items of work quantity, unit price and total for each item (EXHIBIT 10-H)?	--select--
	g Is fixed fee over 15%?	--select--
4	**Audit and review documents before contract execution**	
	a Was proposed ICR submittal sent to A&I for acceptance (EXHIBIT 10-K)?	--select--
	b What is A&I's ICR decision?	--select--
	c Does the final cost proposal reflect the adjusted or accepted ICR?	--select--
5	**Record of cost/profit negotiations**	
	a Did you verify elements of the cost proposal from the top-ranked consultant?	--select--
	b Did you return remaining concealed cost proposals after successful cost negotiation or dispose of in accordance with written policies and procedures approved by Caltrans?	--select--
	c Did you perform a cost analysis (wage rates, fixed fee, other direct costs, indirect costs and profits)?	--select--
	d Did you document your profit negotiations?	--select--
6	**Mandatory fiscal and federal provisions (EXHIBIT 10-R) (Federal-funded only)**	
	a Are all mandatory fiscal and federal provisions included in contract? (Article IV to XVII)	--select--
	b What mandatory provisions are not verbatim?	
	c Was Exhibit 10-O2 completed and included in the contract?	--select--
7	**Specify if sole source:**	
	Was a public interest finding (EXHIBIT 12-F) prepared by local agency and approved by DLAE?	--select--

No.	DESCRIPTION	
8	**Was price used as an evaluation factor?**	--select--
9	**What Policies and Procedures have been adopted?** --select--	
	a Date adopted Caltrans procedure (CPM or LAPM Ch.10) (mm/yyyy):	
	b Has Caltrans approved local agency's policies and procedures?	--select--
10	**Method of payment in contract?** --select--	
11	**Does contract awarded match that of solicitation?**	--select--
D.	**FOR CONSULTANT CONTRACT AMENDMENT ONLY**	
1	**Amendment number:** _____	
2	**Start date:** _____ **End date:** _____	
3	**Type of original contract:** --select--	
4	**Was small purchase used for original procurement?**	--select--
5	**What is A&I's ICR decision?** --select--	
6	**Total amended contract amount:** _____	
7	**Description of need for amendment:**	
8	**Has the scope of work changed?**	--select--
9	**Does the revised scope of work include a consultant in management support role?**	--select--
10	**Was Exhibit 10-U submitted if there is a consultant in management support role?**	--select--

Note: Please submit EXHIBIT 10-C using fillable PDF along with a signed copy via email.

I certify the information I provided on and in connection with this form is true, accurate and complete and supporting documents are filed in our office filing system. I also understand that any false statements or omissions on this document may be grounds for disqualification from federal and/or State funding.

_____ _____

Local Agency Contract Administrator Date

I have reviewed the Exhibit 10-C Consultant Contract Reviewers Checklist but I have not reviewed the supporting documentation in detail. The Exhibit 10-C checklist appears to have been prepared in accordance with Chapter 10 "Consultant Selection" of the Local Assistance Procedures Manual. I have not conducted a comprehensive review of the supporting documentation and cannot, therefore, attest that there are no errors, ambiguities, or omissions in the Exhibit 10-C checklist. Caltrans assumes no liability for any defect in the Exhibit 10-C by virtue of its review of this checklist.

_____ _____

Caltrans DLA **Acceptance Date**

INSTRUCTIONS FOR A&E CONSULTANT CONTRACT REVIEWERS CHECKLIST

Submittal of Exhibit 10-C for new or amended consultant contracts is required for all A&E consultant contracts (State and Federal) for Caltrans review and acceptance prior to contract award. Sections A, B, and C on Exhibit 10-C will be skipped for contract amendments (Section D applies to amendments only). A designated contract administrator must prepare and sign EXHIBIT 10-C (Not applicable for Non A&E Contracts).

EXHIBIT 10-C must be submitted using fillable PDF along with a signed copy via email to aeoversight@dot.ca.gov in the following format **FederalProjectNumber/District/Agency/New (or Revised).**

The following are considered procedural deficiencies and may jeopardize federal and/or state funding on completed or ongoing projects.

- Did not advertise as required.
- Did not re-advertise for required period.
- Did not identify all evaluation factors in Request for Qualifications/Request for Proposals (RFQ/RFP).
- Did not identify the weights or values of each evaluation factor in RFQ/RFP.
- Method of payment in RFP not consistent with contract cost proposal.
- No supporting documentation that all proposals were received within the required time frames (example: proposals not date-stamped).
- No conflict of interest signed by panel members or evidence an appropriate Code of Ethics was followed in accordance with federal requirements.
- Profit not negotiated.
- No support that cost analysis was performed.
- Cost elements not negotiated/evidence of negotiations not maintained.
- No prior authorization given for sole source contracts.
- Title VI requirements [per 23 CFR 172 (c) (vi)] revisions needed in contracts (federal funded only).
- DBE requirements [per 23 CFR 172 (c) (vii)] revisions needed in contracts (federal funded only).

The following are considered unrecoverable deficiencies and shall result in the withdrawal of all or a portion of the federal and/or state funds from the project:

- No records or documentation to support consultant procurement.
- No support for scoring and/or ranking of consultants.

Two or more of the following are considered unrecoverable deficiencies and shall result in the withdrawal of all or a portion of the federal and/or state funds from the project:

- No justification for sole-sourcing.
- Could not support contract was advertised at all.
- No independent cost estimate performed.
- Local preference used.
- Price used as an evaluation factor.
- Scoring evaluation factors or weights do not match those identified in the RFQ/RFP.
- Did not include any evaluation factors in the RFQ/RFP.

- Cost proposal does not break down job classifications and types of costs by amount and/or rates.
- Missing Title VI requirements [per 23 CFR 172 (c) (vi)] from contracts (Federal Funded Only).
- Missing DBE requirements [per 23 CFR 172 (c) (vii)] from contracts (Federal Funded Only).

A. PROCUREMENT PLANNING

1. DESCRIPTION OF NEED FOR CONSULTANT

Describe need for consultant: How was the need for a consultant justified? Compare the project schedule and objectives with local agency capabilities, staff expertise and availability, and funding resources.

2. LOCAL AGENCY CONTRACT ADMINISTRATOR (NAME & CONTACT INFO)

The Local Agency Contract Administrator must be a qualified local agency employee, or have staff that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract.

a. Include contact information: name of contract administrator.
b. Phone and email of contract administrator.

3. SCOPE OF WORK

Indicate if scope of work (SOW) is included in solicitation and contract. SOW means all services, work activities, and actions required of the consultant by the obligations of the contract.

a. Indicate if the contract includes a consultant in a management role (EXHIBIT 10-U). The use of a consultant in a management role should be limited to unique or unusual situations. These situations require a thorough justification and approval by FHWA before contract execution.
b. Schedule of work from work breakdown structure (WBS) helps to determine the schedule of contract delivery and must be included in the scope of work to increase accountability and efficiency of a contract.

4. INDEPENDENT COST ESTIMATES (ICE)

a. Enter the amount of an independent cost estimate (ICE). An ICE is needed for cost analysis and contract negotiation (23 CFR 172.7(a)(1)(v)(B)) to ensure that consultant services are obtained at a fair and reasonable cost. In order to properly identify the maximum amount of the contract and to assess the validity of a consultant's cost proposal, the contracting agency shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work.
b. Agencies are required to maintain documentation to show how the ICE was calculated. Several methods can be used. Refer to Module 4 for examples on how to calculate the ICE at:

http://www.dot.ca.gov/hq/LocalPrograms/AE/2016/M4-slides.pdf or
http://www.dot.ca.gov/hq/LocalPrograms/AE/2016/M4-2016-11-14.mp4.

B. SOLICITATION DOCUMENTS AND ADVERTISEMENT

1. CONSULTANT SELECTION COMMITTEE AND CONFLICT OF INTEREST

a. A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals.
b. Exhibit 10-T should be completed by all panel members and anyone involved in the procurement process, and include signatures and dates.
c. Completed Exhibit 10-T includes all applicable boxes checked and the contract administrator's signature verifying no conflicts of interest.

2. PROCUREMENT SCHEDULE

Provide an estimated schedule for the procurement process. Establish a submittal deadline for responses to the RFP/RFQ that provides sufficient time for interested consultants to receive notice, prepare, and submit a proposal. Except in unusual circumstances, this deadline shall not be fewer than 14 calendar days from the date of issuance of the RFP/RFQ. A contract procurement schedule must be completed before advertising the contract and included it in the solicitation document, identifying key dates for consultant selection activities.

3. TYPE OF CONTRACT

Specify the anticipated type of contract listed in the solicitation document. Three contract types are typical for A&E consultant services for Federal aid highway projects. Contract type refers to the method in which the contract is structured to cover the work.

a. Project-specific contract: A contract between the contracting agency and consultant for the performance of services and a defined scope of work related to a specific project or projects
b. Multi-purpose or Multi-phased contract: A project-specific contract where the defined scope of work is divided into phases that may be negotiated and executed individually as the project progresses.
c. On-call contract: A number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period. An "on-call" typically used when a specialized service of indefinite delivery or indefinite quantity is needed for a number of different projects, such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, field surveying, etc. Further requirements for on-call contracts:
    1. Specify a reasonable maximum length of contract period, including the number and period of any allowable contract extensions, which shall not exceed five years;
    2. Specify a maximum total contract dollar amount that may be awarded under a contract;
    3. Include a statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the services; and
    4. Indicate if multiple consultants are to be selected and multiple on-call or indefinite delivery/indefinite quantity (IDIQ) contracts will be awarded through a single solicitation for specific services, and if so, how task orders will be issued.

4. METHOD OF PAYMENT

The anticipated method of payment must be specified in the original solicitation, the executed contract and any subsequent modification thereto. Methods of payment are based on the scope of services to be performed:

a. *Actual Cost-Plus-Fixed Fee*: is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. Fixed fees apply to the total direct and indirect costs.
b. *Cost Per Unit of Work*: is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance and the extent or quantity of the work is indefinite
c. *Specific Rates of Compensation*: should only be used when estimating the extent or the duration of work is not possible at the time of procurement, or estimating costs with any reasonable degree of accuracy.
d. *Lump Sum*: is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations.

When the method of payment is other than lump sum, the contract shall specify a maximum amount payable which shall not be exceeded unless adjusted by a contract modification.

5. EVALUATION CRITERIA AND WEIGHTS (EXHIBIT 10-B)

The criteria and relative weights must be included in the RFP/RFQ, and the same criteria and relative weights must be used on the evaluation sheets. See Exhibit 10-B for example criteria. The evaluation criteria MUST have weights in order to properly evaluate the submittals. The criteria MUST be the same as what was listed in the solicitation document. Any changes not made through an addendum render the contract invalid. The combined total of non-technical criteria cannot exceed 10% of the evaluation criteria. Consultants should be initially ranked based on raw data and the final ranking based on the sum of the initial ranking. Please see example iii. Module 3: Evaluation and Selection of Consultant located at:

- http://www.dot.ca.gov/hq/LocalPrograms/AE/2016/M3-slides.pdf or
- http://www.dot.ca.gov/hq/LocalPrograms/AE/2016/M3-2016-08-31.mp4

6. PROCUREMENT TYPE (RFP vs RFQ)

a. One step RFQ: For services (materials testing, construction inspection, etc.).
b. One step RFP: For project specific work (bridge painting, roadway design, etc.).
c. The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple on-call contracts, or pre-qualified list, through a single solicitation. This method requires substantially more work and time than the other two methods described above.
d. Length of contract: all contracts must have a duration specified. On-call contracts should not exceed five years (three year contract with options to twice extend an additional year). The type and length of the contract should be listed in the solicitation.

7. DBE UTILIZATION GOAL SETTING (FEDERAL FUNDED ONLY)

DBE goals are required for all Federal-aid contracts including on-call contracts.

a. Exhibit 9-D (DBE Contract Goal Methodology) must be submitted and reviewed by Caltrans for consultant contracts equal to or greater than $500.000. An agency must have documentation as to how the goal was calculated. Use your independent cost estimate and follow the DBE procedures located at http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter9/9d.pdf
b. Exhibit 10-I (NOTICE TO PROPOSERS DBE INFORMATION) must be included in the solicitation.
c. Proposals without information regarding, or not meeting, the required DBE utilization goal or without a Good Faith Effort documentation are considered nonresponsive and shall be rejected. Zero (no subcontracting opportunities) DBE goals must be approved by the DLAE prior to contract execution. No goal means DBE was not considered in solicitation.
d. Exhibit 15-H (DBE Information—Good Faith Efforts) must be approved by LPA.

8. RECORDS OF PUBLICATION FOR RFP OR RFQ

a. List the platform that was used to advertise the RFP/RFQ: A public forum must be used that gives both in-state and out-of-state consultants a fair opportunity to be considered for award. Acceptable advertisements include, although not limited to: public clearinghouse, Planetbids, Public Purchase, and local agency's website.
b. Advertising must be at least 14 calendar days. Caltrans suggests 21 days minimum.

9. RECORDS OF RESPONSE TO SOLICITATION

a. A minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement; if only one proposal is received, a signed Public Interest Finding (PIF) approved by the DLAE is required. In either case, the re- advertisement of the RFP should be considered as an option.
b. The Contract Administrator must evaluate each SOQ/SOP and verify each proposal contains all of the forms and other information required by the solicitation.
c. All proposals received should be documented (e.g. log sheet, copies of time-stamped envelopes, etc.), and copies must be kept in agency's files.

C. EVALUATION AND SELECTION

1. DOCUMENTATION OF CONSULTANT SELECTION

a. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended. All supporting documentation must be retained in the project files for the required retention period in the event an audit or review is performed.
b. Evaluation criteria must be the same as in solicitation from which a qualifications based selection was conducted.
c. Original score sheets complete with signatures must be in the file. Spreadsheets alone are not an acceptable method of showing evaluation. Score sheets must be signed and dated by all evaluators.
d. Exhibits 10-O1 must be included in the technical proposal or the statement of qualification package provided to the local agency by each (prime consultant) proposer and required to be submitted to the DLAE for federal reimbursement (Federal funded projects only). For calculating goals, refer to:

   http://www.dot.ca.gov/hq/LocalPrograms/AE/2016/M2-slides.pdf or

   http://www.dot.ca.gov/hq/LocalPrograms/AE/2016/M2-2016-09-02.mp4 Module 2.

For contracts with no DBE contract goal, Exhibit 10-O1 is not necessary.

e. Exhibit 10-U must be completed by all consultants in management support role positions and submitted to FHWA for approval through Caltrans HQ prior to contract execution.

2. DEVELOP TOP RANKED CONSULTANTS AND NOTIFY ALL INTERVIEWEES

a. Three or more highest ranked consultants (short listed) will be interviewed and a final ranking of the highest ranked consultants must be developed. All consultants that submitted technical proposals must be informed about the final ranking of consultants. Notes should be kept to explain why a particular consultant was not selected if requested.
b. Interviews are to be structured and conducted in a formal manner. Each consultant to be interviewed is sent an invitation to the interview, with an agenda and timeline. A copy of the draft proposed contract, defining the standard contract language/boilerplate is also provided. Reference checks shall be completed and other information gathered before the interviews are conducted. All oral interviews must be evaluated including signatures and dates.

3. COST PROPOSAL

a. All cost proposals need to be in the same format as Exhibit 10-H or equivalent and contain all of the cost components including direct, indirect, other direct, and fee.
See http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter10/10h.pdf for sample form for each method of payment.
b. The method of payment must be specified in cost proposal. Four methods are permitted depending on the scope of services to be performed: Actual Cost-Plus-Fixed Fee; Cost Per Unit of Work; Specific Rates of Compensation; Lump Sum.
c. Cost proposal must identify classifications to be billed. Labor costs must be broken down to direct and indirect.
d. ICR must be a given current fiscal year.
e. All key personnel must be identified in cost proposal.
f. Cost proposal must include other direct costs and supporting calculations (EXHIBIT 10-H)
g. The determination of the amount of the fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. Fixed fees in excess of 15% of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist (23 CFR 172.11.b (3) (iii)).

4. AUDIT AND REVIEW DOCUMENTS

For contracts are equal to or greater than $150,000, an annual Exhibit 10-K, Consultant Annual Certification of Indirect Cost and Financial Management System of all A&E firms on the contract must be submitted to A&I for review (All prime and sub-consultants) for both federal and state funded contracts. The firm will be listed on A&I's website, if the firm's annual indirect cost rate has been accepted by A&I and shown with the identification number and the applicable fiscal year.

a. Proposed indirect cost rate on all contract proposals are subject to review by A&I prior to execution.
b. The review may result in acceptance, adjustment, or denial of proposed ICR. The final cost proposal must be revised if applicable to reflect the adjusted or denied ICR.
c. Any findings by A&I need to be resolved prior to contract execution or the contract could be considered ineligible for state and/or federal funding.

5. RECORD OF COST/PROFIT NEGOTIATIONS

a. Selected/best-qualified consultant's cost elements must be analyzed including necessity for and reasonableness (verification of cost or price information not comparing cost or price data).
b. At the completion of successful cost negotiations, all remaining concealed "unopened" cost proposals shall be returned to consultants or dispose of in accordance with written policies and procedures approved by FHWA (23 CFR 172.5(c)).
c. Cost analysis, i.e., verifying the cost in the cost proposal from the top-ranked consultant and evaluating the specific elements such as direct salary or wage rates, fixed fee, other direct costs, indirect costs and profits (23 CFR Part 172.11(b)). Cost Analysis is the analysis of the separate cost elements of a service to verify proposed costs are reasonable for the work to be performed and in compliant with Federal cost principles. Cost Analysis is used to verify direct cost in consultant's cost proposal to actual costs of labor, products and services and to determine if the costs are reasonable. Price Analysis (comparisons with previous prices) may be included, provided Cost Analysis was performed on the previous prices, reasonableness was determined and the previous contracted work is substantially the same.
d. In accordance with federal guidelines, project record of negotiations of cost/profit shall be kept for at least three (3) years after payment of the final federal or state voucher.

6. MANDATORY FEDERAL FISCAL PROVISIONS (FEDERAL-FUNDED ONLY)

a. The 14 articles list in Exhibit 10-R as mandatory and verbatim must be in the contract.
b. List provisions that are not verbatim.
c. Exhibits 10-O2 must be completed at the conclusion of cost negotiations, incorporated into the final agreement and a copy sent to the DLAE. Refer to: https://player.vimeo.com/video/127551624 or http://www.dot.ca.gov/hq/LocalPrograms/AE/2016/M2-2016-09-02.mp4 Module 2 for calculating goals.

7. SOLE-SOURCE CONTRACT

Sole-source also known as noncompetitive is defined as the method of procurement of engineering and design related services when it is not feasible to award the contract using competitive negotiation. Sole- source contracts should be used only in very limited circumstances. Document the justification for sole- source in detail. For sole-source contracts, the DLAE must approve and sign the Public Interest Finding (PIF) EXHIBIT 12-F. If the PIF is not approved, the contract is considered invalid and not federally reimbursable. All sole-source PIF's must have an independent cost estimate attached.

8. EVALUATION FACTOR

For A&E contracts, price cannot be used as an evaluation factor. Price should not be considered until negotiations. Only the consultant chosen for negotiations should have their cost proposal opened (all other proposals should be returned to sender unopened or disposed of according to agency policy after contract execution).

9. POLICY AND PROCEDURES

a. Date adopted Caltrans procedures - Consultant Procurement Manual (CPM) or LAPM Ch. 10. According to federal regulations, an agency must have an approved procedure or adopt Caltrans.
b. If not Caltrans procedures, has local agency's procedure been approved by Caltrans? Local agency can use their own procedures but these must be approved by Caltrans to be considered valid. All agencies must follow LAPM Ch. 10 for consultant contracts in addition to any policies and

procedures they have in place.

10. METHOD OF PAYMENT IN CONTRACT

The method of payment listed in the executed contract should be the same as the solicitation and cost proposal.

11. CONTRACT AWARDED SHOULD MATCH SOLICITATION

The type of contract (Specific, Multi-phased, or On-call) listed in the executed contract must be the same as the solicitation and cost proposal.

D. FOR CONSULTANT CONTRACT AMENDMENT ONLY

1. AMENDMENT NUMBER

Every contract amendment must have an amendment number and that amendment number must be specified in the EXHIBIT 10-C.

2. SPECIFY MAXIMUM LENGTH OF CONTRACT AMENDMENT

Specify a reasonable maximum length of consultant contract amendment period by indicating start date of the amendment and end date of the total new-contract period. For on-call contract, the maximum length of consultant contract amendment period shall not exceed five years in total.

All contract amendments must be fully executed before the ending date of the contract. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement.

3. TYPE OF ORIGINAL CONTRACT

Specify the original type of contract awarded in a contract amendment. Three contract types which are typical for A&E consultant services for Federal aid highway projects are project-specific, multi-phased, and on-call. A contract type specified in the contract amendment shall match with the original contract.

4. WAS SMALL PURCHASE USED FOR ORIGINAL PROCUREMENT?

The full amount of any contract modification or amendment that would cause the total contract amount to exceed the federal simplified acquisition threshold (currently established at $150,000) would be ineligible for federal funding. Also, FHWA reserves the right to withdraw all federal-aid funding from a contract if it is modified or amended above the applicable established simplified acquisition threshold. All small purchase contracts shall have a start and end date.

5. WHAT IS A&I'S ICR DECISION?

For amendment contracts are equal to or greater than $150,000, an annual Exhibit 10-K, Consultant Annual Certification of Indirect Cost and Financial Management System of all A&E firms on the contract must be submitted to A&I for review (All prime and sub-consultants) for both federal and state funded contracts. Proposed indirect cost rate on all contract proposals are subject to review by A&I prior to contract award. The review may result in acceptance, adjustment, or denial of proposed ICR. The final cost proposal must be revised if applicable to reflect the adjusted or denied ICR.

6. TOTAL AMENDED CONTRACT AMOUNT

Specify a maximum total amount of amended contract that may be awarded under the total contract. A&E Consultant Audit and Review Process of LAPM Chapter 10 shall apply to the entire contract and must be completed prior to execution of the contract amendment.

The full amount of any contract modification or amendment that would cause the total contract amount to exceed the federal simplified acquisition threshold (currently established at $150,000) would be ineligible for federal funding.

7. DESCRIPTION OF NEED FOR AMENDMENT

Describe need for amendment of the existing project schedule and objectives: How was the need for an amendment justified? How has the original project been handled and why is it required to be modified? (e.g.: Extra time, added work, or increased costs). Only work within the original advertised scope of services shall be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or state reimbursement.

8. HAS THE SCOPE OF WORK CHANGED?

Scope of work and preparation of amendments must be clearly stated in EXHIBIT 10-C and the amendment contract to ensure that any changes to the scope are within the constraints of the original RFP/RFQ.

Only work included within the original advertised scope of services and evaluation criteria of the solicitation from which a consultant was selected based on qualifications to perform may be incorporated into a contract. Necessary or desired services which are outside of the advertised scope from which the qualifications based selection was conducted should be procured under a new advertisement, accomplished with in-house contracting agency staff, or performed under an existing on-call contract which allows for the desired services, necessary qualifications, costs, and schedule.

9. DOES THE REVISED SCOPE OF WORK INCLUDE A CONSULTANT IN MANAGEMENT SUPPORT ROLE?

Indicate if the contract amendment includes a consultant in a management role. Local agency shall fill out EXHIBIT 10-U if they need for consultant(s) in management support role.

10. WAS EXHIBIT 10-U SUBMITTED IF THERE IS A CONSULTANT IN MANAGEMENT SUPPORT ROLE?

A completed Exhibit 10-U shall be submitted to FHWA for approval prior to execution of the contract amendment for which federal funds are being sought. Local agencies must submit an approved Exhibit 10-U prior to seeking federal reimbursement.

Exhibit A

RESOLUTION NO. RES-2018-150

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA APPROVING A MASTER FUNDING AGREEMENT WITH THE METROPOLITAN TRANSPORTATION COMMISSION FOR PLANNING, PROGRAMMING, TRANSPORTATION, TRANSIT, LAND USE AND OTHER PROJECTS FOR FISCAL YEARS 2018/2019 THROUGH 2027/2028, FILE NO. ST18-002

WHEREAS, the Metropolitan Transportation Commission (MTC), from time to time, expects to provide grant funding to Bay Area jurisdictions for planning, programming, transportation, transit, land use and other similar projects; and

WHEREAS, the City of Santa Rosa has been the recipient of numerous grants through MTC over the years, and expects this trend to continue; and

WHEREAS, to ease the process of administering agreements related to grant funding, MTC is requesting that all jurisdictions receiving grant funding through the current year's Planning Grant cycle enter into a Master Funding Agreement, which would establish terms and conditions for all future grant funding with MTC over a ten-year period (fiscal years 2018/2019 through 2027/2028); and

WHEREAS, on April 25, 2018, the MTC Commission approved a grant in the amount of $800,000 to the City of Santa Rosa to update the Downtown Station Area Specific Plan, which would be the first grant funding provided by MTC to the City of Santa Rosa under the Master Funding Agreement, and will be acted on by the City Council as Supplement One to the Master Funding Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Santa Rosa approves the Master Funding Agreement with the Metropolitan Transportation Commission for planning, programming, transportation, transit, land use and other projects for fiscal year 2018/2019 through fiscal year 2027/2028, in substantially the same form as Exhibit A to the Resolution, subject to approval as to form by the City Attorney.

IN COUNCIL DULY PASSED this 4th day of September, 2018.

AYES: (6) Vice Mayor Rogers, Council Members Combs, Olivares, Sawyer, Schwedhelm, Tibbetts
NOES: (0)
ABSENT: (1) Mayor Coursey
ABSTAIN: (0)

ATTEST: _____ City Clerk

APPROVED: _____ Mayor

APPROVED AS TO FORM:

_____ City Attorney

Exhibit A – Master Funding Agreement with the Metropolitan Transportation Commission for planning, programming, transportation, transit, land use and other projects for fiscal year 2018/2019 through fiscal year 2027/2028