

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency ("SFMTA"), through its Executive Director/CEO (or his designee), to execute an agreement with the San Francisco County Transportation Authority ("SFCTA") to obtain the assistance of the SFCTA in performing specific tasks related to the Eastern Neighborhoods Transportation Implementation Planning Study ("EN TRIPS") for a contract amount not to exceed \$199,470 and term not to exceed 30 months.

SUMMARY:

- EN TRIPS is a coordinated multi-agency program led by the SFMTA that will analyze, design and address environmental impacts of a series of key transportation improvements needed to support the Eastern Neighborhoods Area Plans, a general planning document that establishes development and zoning parameters for the Mission, Central Waterfront, East South of Market and Showplace Square/Potrero Hill neighborhoods.
- The overall EN TRIPS work program proposes a staffing strategy that includes a combination of agency staff labor from SFMTA, SFCTA and the San Francisco Planning Department to conduct significant portions of the project work, complemented by consultant assistance for tasks that cannot be completed in-house.
- SFCTA would provide specific assistance in conducting a travel behavior survey, providing travel demand forecasting, and assisting with the funding and financial feasibility tasks.
- Since SFMTA will be paying for the services of SFCTA, a contract is required between the two agencies.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

Suzanne Chen-Harding

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

SFMTA Board approval of this resolution would authorize the SFMTA through its Executive Director/CEO (or his designee) to execute a contract with the San Francisco County Transportation Authority to obtain the assistance of the SFCTA assistance in preparing portions of the EN TRIPS study.

GOAL

The SFMTA will further the following goals of the Strategic Plan through the execution of this agreement:

Goal 1 – Customer Focus: To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy

Objective 1.1 - Improve safety and security across all modes of transportation

Objective 1.5 - Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)

Goal 2 – System Performance: To get customers where they want to go, when they want to be there

Objective 2.2 - Transit connectivity and span of service

Objective 2.3 - Fulfill bicycle and pedestrian network connectivity

Objective 2.5 - Manage parking supply to align with SFMTA and community goals

Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization

Objective 4.2 - Ensure efficient and effective use of resources

DESCRIPTION

On October 2, 2007 and November 18, 2008, the SFMTA Board authorized to accept and expend the grant funding for EN TRIPS from the San Francisco Foundation and the Metropolitan Transportation Commission, respectively.

Identified as a Priority Development Area (PDA), San Francisco’s Eastern Neighborhoods comprise the mixed-use and mixed-income communities of the Mission, SoMa, Central Waterfront and Showplace Square/Potrero. The San Francisco Planning Department has recently completed a multi-year planning process for the Eastern Neighborhoods. This process resulted in the adoption of new Area Plans and significantly revised zoning controls for the four Eastern Neighborhoods. These new policies and controls were adopted by the Board of Supervisors and signed by the Mayor and became effective in late January, 2009.

The Eastern Neighborhoods Area Plans provide a high-level roadmap for such improvements and call for further analysis, identification and design of specific transportation projects through EN TRIPS. The preparation of EN TRIPS will be a coordinated, multi-agency program led by the SFMTA with partner agencies, the San Francisco Planning Department and the SFCTA.

The proposed work to be performed by SFCTA is an integral part of the preparation of EN TRIPS. As a partner agency in the project, SFCTA would provide assistance in conducting a travel behavior survey, providing travel demand forecasting, performing financial feasibility assessment of design concepts, assisting with the preparation of a funding and implementation strategy, assisting in the

environmental review process, and reviewing and commenting on work product from outside consultants. The SFCTA will provide specialized technical skills and expertise, particularly with travel demand modeling and transportation funding and financial feasibility, that is unique to the SFCTA.

Since the SFCTA is an entity separate from the City and County of San Francisco, and SFMTA will be paying for the services it receives from SFCTA, the agencies must enter into a contract to specify the services to be provided by SFCTA and SFMTA's payment obligations regard to EN TRIPS. Similarly, the SFMTA and the Planning Department will enter into a parallel Memorandum of Agreement (MOA) to coordinate between the two departments. Under both agreements, the SFMTA will act as the lead agency responsible for the EN TRIPS work program and the same master scope of work will be provided in each.

ALTERNATIVES CONSIDERED

The SFMTA Board may choose not to pursue this agreement with the SFCTA; however, SFMTA would not be able to begin this project. If this agreement with the SFCTA is not executed, it will have an adverse impact on SFMTA's ability to provide adequate future service to the public.

FUNDING IMPACT

This contract will be funded from the \$1,250,000 in grant funding that SFMTA has secured to conduct the Eastern Neighborhoods Transportation Implementation Planning Study. The funding sources are: 1) a \$750,000 Metropolitan Transportation Commission Station Area Planning Grant providing Federal Highways Administration funding; and 2) a \$500,000 local match secured through a separate grant from the San Francisco Foundation.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

This contract will require approval from the Civil Service Commission. The City Attorney's Office has reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the SFMTA, through its Executive Director/CEO or his designee, to execute an agreement with the San Francisco County Transportation Authority to obtain the assistance of the SFCTA in performing specific tasks related to the Eastern Neighborhoods Transportation Implementation Planning Study for a contract amount not to exceed \$199,470 and term not to exceed 30 months.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA), as the lead agency, with partner agencies the San Francisco Planning Department and the San Francisco County Transportation Authority (SFCTA) will conduct the Eastern Neighborhoods Transportation Implementation Planning Study (EN TRIPS) and Environmental Review; and,

WHEREAS, EN TRIPS will analyze, design and address environmental impacts of a series of key transportation improvements needed to support the Eastern Neighborhoods Area Plans, a general planning document that establishes development and zoning parameters for the Mission, Central Waterfront, East South of Market and Showplace Square/Potrero Hill neighborhoods; and,

WHEREAS, The overall EN TRIPS work program proposes a staffing strategy that includes a combination of agency staff labor from the SFMTA, the SFCTA and the San Francisco Planning Department to conduct significant portions of the project work complemented with consultant assistance for tasks that cannot be completed in-house; and,

WHEREAS, The SFMTA seeks the assistance of the SFCTA in carrying out the EN TRIPS work program, including conducting a travel behavior survey, providing travel demand forecasting, performing financial feasibility assessments, assisting in the preparation of a funding and implementation strategy, assisting in the environmental review process, and reviewing and commenting on work product from outside consultants; and,

WHEREAS, The funding for EN TRIPS will be from a combination of federal, state and local sources; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through its Executive Director/CEO or his designee, to execute an agreement with the San Francisco County Transportation Authority to provide assistance in conducting the Eastern Neighborhoods Transportation Implementation Planning Study for a contract amount not to exceed \$199,470 and term not to exceed 30 months.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of

_____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave. 7th floor
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and the
San Francisco County Transportation Authority**

This Agreement is made this ____ day of April, 2009, in the City and County of San Francisco, State of California, by and between the San Francisco County Transportation Authority (the "Authority" or "Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

RECITALS

WHEREAS, SFMTA, as the lead agency, is coordinating the preparation of the Eastern Neighborhoods Transportation Implementation Planning Study ("EN TRIPS"); and

WHEREAS, EN TRIPS will conduct planning, design and select environmental review work to help advance the delivery of key transportation and public realm infrastructure projects needed to serve existing and future development in the Eastern Neighborhoods; and

WHEREAS, In carrying out EN TRIPS, SFMTA seeks assistance in conducting a travel behavior survey, providing travel demand forecasting, performing financial feasibility assessment of design concepts, preparing a funding and implementation strategy, determining the appropriate level of environmental review, and reviewing and commenting on work product from outside consultants; and

WHEREAS, No activities constituting construction will be performed under this Agreement; and

WHEREAS, The Authority represents and warrants that it is qualified to perform the services required by City as set forth in this Agreement; and,

WHEREAS, The Authority acknowledges that federal funding for the Authority's Work under this agreement will come from in whole or in part from Federal Highway Administration grants from the federal Surface Transportation Program, which grants are administered by the California Department of Transportation and awarded to the Metropolitan Transportation Commission for their Station Area Planning Grant Program; and,

WHEREAS, The Authority represents and warrants that it will comply with all federal and state requirements set out in this Agreement or attached to this Agreement in the Included Appendices or otherwise referenced in this Agreement, or imposed under federal or state law or regulations, as a result of said federal funding, and that all such requirements are incorporated into and are material terms of this Agreement that supercede any conflicting provisions of this agreement; and,

WHEREAS, Approval for this Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number _____ on _____;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. The Authority's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from **April 1, 2009** through **September 30, 2011**.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and the Authority has been notified in writing.

4. Services Contractor Agrees to Perform

The Authority agrees to perform the services set forth as being provided by the Authority in Appendix A, "Master Workslope," attached hereto and incorporated by reference as though fully set forth herein. The Authority agrees to perform and comply with all federal and state requirements and obligations resulting from the federal funding for this Agreement, set forth in Appendix A and Appendix C through Appendix G, inclusive, attached hereto and incorporated by reference as though fully set forth herein. The Authority's agreement to perform and comply with such requirements and obligations, and the assumption of all risks and the Authority's costs associated therewith, are part of the consideration for this Agreement. Appendices F and G shall only be applicable to the extent that the Authority subcontracts any of the work to be performed under this Agreement.

Unless otherwise specifically directed by the SFMTA in writing, Authority and its subcontractors shall not perform any work or services constituting construction under this Agreement. The SFMTA will perform construction work necessary to support the work under this Agreement with its own forces or by separate contract competitively bid.

5. Compensation

a. SFMTA shall pay Authority in quarterly payments on or before the 30th day of each month following the end of the quarter, or 30 days from receipt of the quarterly invoice, whichever is later, for work, as set forth in Section 4 of this Agreement that the SFMTA's Executive Director/CEO, in his or her sole discretion, concludes has been performed as of the last day of the preceding quarter. In no event shall the amount of this Agreement exceed One Hundred Ninety-Nine Thousand, Four Hundred Seventy Dollars (\$199,470). Authority agrees to submit invoices to SFMTA on a quarterly basis for payment for the work performed. A sample invoice is provided in **Appendix B**.

b. No charges shall be incurred under this Agreement nor shall any payments become due to Authority until reports, services, or both, required under this Agreement are received from Authority and approved by the SFMTA as being in accordance with this Agreement. City may withhold payment to Authority in any instance in which Authority has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

c. This Agreement is subject to the Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments. In addition, Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual project cost items. Authority and all subcontractors under this Agreement shall also comply with federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

d. This Agreement is subject to and Authority shall comply with Article IV "Fiscal Provisions" and Article V "Audits, Third Party Contracting, Records Retention and Reporting" of the Master Agreement Administering Agency-State Agreement for Federal-Aid Projects ("Master Agreement") between the City and CalTrans, a copy of which is appended to this Agreement.

e. City's payments to Authority for Project-related travel and subsistence (per diem) expenses shall not exceed rates authorized to be paid rank and file employees of the State of California under current State Department of Personnel Administration (DPA) rules. The City shall compensate Contractor for per diem reimbursements and travel costs incurred by Contractor and its subcontractors as project costs only after Authority and its subcontractors have actually incurred those costs.

6. Guaranteed Maximum Costs

a. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Authority for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

Invoices furnished by Authority under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Authority shall be subject to audit by City and any federal or state agency administering or providing funding for this Agreement.

Payment shall be made by City to Authority at the address specified in the section entitled “Notices to the Parties.”

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys’ fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Disallowance

If Authority claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Authority shall promptly refund the disallowed amount to City upon City’s request. At its option, City may offset the amount disallowed from any payment due or to become due to Authority under this Agreement or any other Agreement.

10. Left Blank by Agreement of the Parties

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or the receipt thereof by Authority, shall in no way lessen the liability of Authority to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Authority without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Authority. Authority will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Authority. Authority shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Left Blank by Agreement of the Parties

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

Authority or any agent or employee of Authority shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Authority or any agent or employee of Authority shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Authority or any agent or employee of Authority is liable for the acts and omissions of itself, its employees and its agents. Authority shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Authority's performing services and work, or any agent or employee of Authority providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Authority or any agent or employee of Authority.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Authority's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Authority performs work under this Agreement.

b. Payment of Taxes and Other Expenses.

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that one or more of Authority's employees is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Authority which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Authority for City, upon notification of such fact by City, Authority shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Authority under this Agreement (again, offsetting any amounts already paid by Authority which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement,

Authority's employees shall not be considered employees of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Authority's employees are employees for any other purpose, then Authority agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Authority's employees were not employees.

15. Left blank by agreement of the parties (Insurance)

16. Indemnification

Authority shall indemnify, defend, and hold harmless the City, its Board members, representatives, agents or employees from and against all claim, 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 Authority, its officers, employees or agents in connection with this Agreement.

Authority shall also indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

City shall indemnify, defend, and hold harmless the Authority, its Commissioners, representatives, agents or employees from and against all claim, 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 City, its officers, employees or agents in connection with this Agreement.

17. Left blank by agreement of the parties (Incidental and Consequential Damages)

18. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Left blank by agreement of the parties (Liquidated damages)

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Authority fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Authority fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Authority.

(3) Authority (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Authority or of any substantial part of Authority's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Authority or with respect to any substantial part of Authority's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Authority.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Authority any Event of Default; Authority shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Authority under this Agreement or any other agreement between City and Authority all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Authority pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Authority written notice of termination. The notice shall specify the date on which termination shall become effective, which in no event shall be less than 10 days from the date of the notice.

b. Upon receipt of the notice, Authority shall commence and perform, with diligence, all actions necessary on the part of Authority to effect the termination of this Agreement on the date specified by City and to minimize the liability of Authority and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At City's direction, assigning to City any or all of Authority's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

(7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Authority and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Authority shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Authority, without profit, for all services and other work City directed Authority to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Authority's direct costs for services or other work. Any overhead allowance shall be separately itemized. Authority may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Authority can establish, to the satisfaction of City, that Authority would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Authority of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(4) A deduction for the cost of materials to be retained by Authority, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Authority or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Authority under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Authority's final invoice; (2) any claim which City may have against Authority in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Authority shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Authority acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City

Authority understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Authority may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Authority agrees that all information disclosed by City to Authority shall be held in confidence and used only in performance of the Agreement. Authority shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: Carter Rohan, Senior Director

Transportation Planning and Development Division
San Francisco Municipal Transportation Agency
One South Van Ness, Suite 7056
San Francisco, CA 94103-5417
carter.rohan@sfmta.com
fax: (415) 701-4735

To Authority: Tilly Chang, Deputy Director for Planning
San Francisco County Transportation Authority
100 Van Ness Avenue, 26th floor
San Francisco, CA 94102-5244
tilly.chang@sfcta.org
Fax: 415.522.4829

Any notice of default must be sent by registered mail.

26. Left blank by agreement of the parties (Ownership of Results)

27. Left blank by agreement of the parties (Works for Hire)

28. Audit and Inspection of Records

Authority agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Authority will permit City to audit, all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement. Authority shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section. The rights of the City, State of California and United States to audit and inspect records under this Section are in addition to, and shall not limit in any way, the rights to audit, inspect records or undertake any other investigation or inquiry into the subject matter of this Agreement, as may arise under this Agreement or applicable law.

29. Subcontracting

Authority may subcontract work to be performed under this Agreement, in consultation with and subject to the written approval of the SFMTA. Authority is prohibited from otherwise subcontracting this Agreement or any part of it. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be void.

In any subcontract for work under this Agreement that exceeds Twenty-Five Thousand Dollars, the subcontract shall contain all the provisions of this Agreement.

30. Assignment

The services to be performed by Authority are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Authority unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Left blank by agreement of parties (Earned Income Credit (EIC) Forms)

33. Reporting

Authority shall submit written reports as reasonably requested by the SFMTA. Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

Authority understands and agrees that work under this Agreement is primarily funded by a grant from the Federal Highway Administration ("FHWA"), administered by the California Department of Transportation ("CalTrans"). Authority shall cooperate with the SFMTA in meeting FHWA and CalTrans reporting requirements, assist the SFMTA in preparing or shall prepare for SFMTA approval reports to those agencies, and provide data for said reports, as directed by the SFMTA.

34. Clean Air, Clean Water and Energy Efficiency Standards.

Authority shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368, Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). Authority shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the California energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Authority acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy

Authority acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Authority agrees that any violation of this prohibition by Authority, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation

Any report or other document submitted by Authority, including copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

39. Compliance with Americans with Disabilities Act and Rehabilitation Act

Authority acknowledges that section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in federally assisted programs. Authority shall comply with Rehabilitation Act and all applicable regulations and guidelines issued pursuant thereto.

Authority acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public irrespective of the source of funding. Authority shall provide the services specified in this Agreement in a manner that complies with the ADA, all applicable regulations and guidelines issued pursuant thereto, and any and all other applicable federal, state and local disability rights legislation. Authority agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this of this section on the part of Authority, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Left blank by agreement of the parties (Public Access to Meetings and Records)

42. Limitations on Contributions

Through execution of this Agreement, Authority acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Authority acknowledges that the foregoing restriction applies only if the contract or a

combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Authority further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Authority's board of directors; Authority's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Authority; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Authority. Additionally, Authority acknowledges that Authority must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Left blank by agreement of the parties (Requiring Minimum Compensation for Covered Employees)

44. Left blank by agreement of the parties (Requiring Health Benefits for Covered Employees)

45. Disadvantaged Business Enterprise Program and Equal Employment Opportunity.

a. Disadvantaged Business Enterprise Program.

This Agreement is subject to the Disadvantaged Business Enterprise ("DBE") Program requirements established by the Federal Highway Administration, and as such programs are administered by the California Department of Transportation. The requirements for the DBE Program applicable to this Agreement and the required forms are set out in Appendix G to this Agreement. If Authority has any questions or concerns regarding DBE requirements, Authority is encouraged to contact Andre Boursse in the SFMTA Office of Contract Compliance, at 415-701-4362.

b. Equal Opportunity.

Authority shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Authority may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Authority agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Authority violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Authority from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Authority's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

Authority may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of

the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Authority may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Authority from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

49. Covenant Against Contingent Fees.

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor; to solicit or secure this Agreement; and Contractor has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Agreement. For breach or violation of this warranty, the SFMTA shall have the right to annul this Agreement without liability of any kind, or at its sole discretion, to deduct from the Agreement price or consideration or otherwise recover the full amount of such fee, commission, brokerage fee, gift or contingent fee.

50. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

52. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

53. Compliance with Laws

Authority shall keep itself fully informed of the City’s Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. Any provision of federal or state law applicable to this agreement as a result of federal funding for this agreement that is in conflict with the other provisions of this agreement shall prevail to the extent of such conflict.

54. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Authority, will be paid unless the provider received advance written approval from the City Attorney.

55. Contractor Certification that It is Not Debarred.

By executing this Agreement, Authority certifies that Authority is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Authority acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

56. Severability and Federal Primacy.

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable. The work under this Agreement is primarily funded through the Federal Highway Administration, and administered by CalTrans. If any provision of this Agreement shall conflict with any applicable federal law, regulation, guideline, or other requirement, the federal provision shall govern.

57. Protection of Private Information

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Authority agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Authority pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Authority.

58. Left blank by agreement of parties (Graffiti Removal)

59. Food Service Waste Reduction Requirements

Effective June 1, 2007, Authority agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Authority agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Authority agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation,

established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Authority's failure to comply with this provision.

60. Work Hours and Safety Standards.

Contractor shall comply with all applicable provisions of sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Relations regulations (29 CFR part 5).

61. Cooperation with Audit of City.

As a condition of the grant funding the work under this Agreement, the City and Authority are subject to audit by the Federal Highway Agency (FHWA) and the California Department of Transportation (CalTrans). Authority agrees to cooperate fully with the City and any of its funding agencies in any audit or inquiry into the use of City or grant funds.

62. Certification Regarding Lobbying

Contractor certifies that to its knowledge and belief that:

a. No federally appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any persons for influencing or attempting to influence an officer or an 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 entering into of any federal cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of an 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, Contractor shall complete and submit the appropriate Federal form, in accordance with the form's instructions.

c. Contractor shall require the language of this certification be included in the award documents for all subawards at all tiers, (including subcontracts, subgrants, and contracts under grants, loans and cooperation agreements) and that all subrecipients shall certify and disclose accordingly.

d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this agreement. 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.

63. Fair Employment Practices and Nondiscrimination.

The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. Contractor agrees to comply with said Fair Employment practices and nondiscrimination requirements, including but not limited to the filing of required forms and declarations asserting Contractor's compliance with those requirements. Contractor further agrees that any agreement entered into by

Contractor with a third party for performance of work related to EN TRIPS shall incorporate this requirement as essential parts of such agreement to be enforced by that third party as verified by Contractor.

64. Cooperation with City, State and Federal Technical and Financial Audits.

The State of California and the United States may conduct technical and financial audits of all work performed under this agreement and records when determined to be necessary or appropriate. Contractor agrees, and shall require its subcontractors approved by the City to agree, to cooperate with such audits by making all appropriate and relevant records available for audit and copying.

65. Accounting System and Record Keeping.

Contractor and any approved subcontractor shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs and cooperate with the SFMTA to establish and maintain an accounting system and records that properly accumulate and segregate incurred costs and matching funds by line item for the work performed under this Agreement. The accounting system of Contractor and its approved subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by the State of California.

66. Maintenance and Retention of Records.

For the purpose of determining compliance with Title 21, California Code of Regulations, Chapter 21, section 2500 et seq., when applicable, and other matters connected with the performance of this Agreement, Contractor and its approved subcontractors, shall each maintain and make available for inspection and audit all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement and any addendum, modification, or substitute agreement, and any subcontract, including, but not limited to, the costs of administering all such contracts. Contractor and its approved subcontractors shall make such materials available at their respective offices at all reasonable times during the entire period of performance of this Agreement and for five (5) years from the date of final payment to Contractor. The City, Department, the California State Auditor, or any duly authorized representative of the City, State or the United States, shall each have access to any books, records, and documents that are pertinent to a this Agreement for audits, examinations, excerpts, and transactions and Contractor and its approved subcontractors shall furnish copies thereof if requested.

67. Establishment and Participation in Inter-Agency Coordinating Committee

Authority agrees to work with SFMTA and the San Francisco Planning Department to establish an Inter-Agency Coordinating Committee. Authority and SFMTA agree to designate a staff member as a primary point of contact for such agency's work related to EN TRIPS and who will participate on behalf of their agency on an Inter-Agency Coordinating Committee that will include representatives of the Authority, SFMTA and the San Francisco Planning Department. The Inter-Agency Coordinating Committee shall meet regularly and shall be responsible for coordinating work performed under this Agreement, and for the review and comment on project deliverables.

68. Included Appendices

The following documents attached to this Agreement as Appendices are included by reference as if fully set out herein.

- A. Services to be Provided by Contractor and Payment Schedule
- B. Sample Invoice
- C. Certification of Consultant (Caltrans 10-F)
- D. Certification of Local Agency (Caltrans 10-G)
- E. Final Cost Proposal (Caltrans 10-H)
- F. Notice to Bidders/Proposers-Disadvantaged Business Enterprise Information (Caltrans 10-I)
- G. Standard Agreement for Subcontractor/DBE Participation (Caltrans 10-J)
- H. Master Agreement Administering Agency-State Agreement for Federal-Aid Projects (Caltrans 4-C)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY	CONTRACTOR
<p>Municipal Transportation Agency</p> <hr/> <p>Nathaniel P. Ford, Sr. Executive Director/CEO</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ David A. Greenburg Deputy City Attorney</p> <p>MTA Board of Directors Resolution No. _____ Dated: _____</p> <p>Attest:</p> <hr/> <p>Secretary, MTA Board of Directors</p>	<p>San Francisco County Transportation Authority</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <hr/> <p>José Luis Moscovich Executive Director</p> <p>City vendor number: 29703</p>

Appendix A
Services to be Provided by Contractor and Payment Schedule

In order to provide clarity and a sense of the overall study process, the following outlines the overall master scope of work for EN TRIPS including all tasks and deliverables that are the responsibility of both agency staff and the Consultant. The Consultant tasks and deliverables that are part of the SFMTA RFP are identified by enumeration and provided in ***BOLD italic*** font below.

1. PROJECT KICKOFF

Consultant roles: to participate in project kickoff and prepare refined workscope and schedule

SFMTA role: to participate in project kickoff, as needed

SFCTA role: to participate in project kickoff, as needed

Planning Department role: to participate in outreach efforts, as needed

Expected schedule: Within 2 weeks of receiving Notice to Proceed

Consultant Task 1: Project Kick-off Meeting

Upon receipt of a Notice to Proceed, Consultant will conduct a project kick-off meeting with key Project Staff.

Deliverable 1: Refined project scope of work including project schedule and deadlines for project deliverables.

2. OUTREACH PROGRAM

Consultant role: to assist City and County staff in preparation of outreach materials and attendance at outreach events

SFMTA role: to lead outreach program (including reserving meeting locations, conduct mailings, reproduction costs, and translation services)

SFCTA role: to participate in outreach efforts, as needed

Planning Department role: to participate in outreach efforts, as needed

Expected schedule: On-going

EN TRIPS will include a robust public outreach program that will serve to educate the public about the Study and the implementation process. A community involvement component of this Study will ensure that the transportation needs of residents and businesses are clearly understood and used to help select final projects for implementation. Outreach will be conducted with the

assistance of both agency staff and Consultants.

The objective of the outreach component of the Study will be to accomplish the following:

- Represent community priorities in an equitable and comprehensive manner to provide a constructive basis for planning.
- Educate public on the need for transportation improvements to support the anticipated development from the Eastern Neighborhoods Plan and the required environmental review process.
- Develop an understanding of the community's vision for the Eastern Neighborhoods transportation infrastructure.
- Summarize preferred concepts and document accurately the proceedings of the outreach process.
- Communicate project design alternatives to the public, including the ability to graphically illustrate concepts through maps, streetscape renderings and other visual aids.

Initial public outreach assistance for EN TRIPS will be provided by a community-based non-profit funded through a separate in-kind grant from the San Francisco Foundation. This initial public outreach work includes communication with community stakeholder groups to support the public involvement during the launch of the Study and may continue through the formation of the Eastern Neighborhoods Citizens' Advisory Committee ("CAC").

Consultant Task 2.a: TAC and CAC

The Consultant will assist staff to prepare for meetings of a Technical Advisory Committee ("TAC") and be involved with the E N Citizen Advisory Committee. At key milestones during this Study, the Consultant will assist staff at workshop and forum opportunities for the general public to discuss issues openly and participate in the formulation and selection of preferred concepts and designs. In addition, the Consultant may assist staff at additional meetings with stakeholder groups at their own meetings to discuss the project and to bring information and public input back to the entire project team.

TECHNICAL ADVISORY COMMITTEE

An EN TRIPS Technical Advisory Committee (TAC) will be formed to collaborate between stakeholder agencies and the project team in developing specific plan concepts and help guide the project through the work program tasks described below. The TAC will meet regularly throughout the project timeline and membership on the TAC may include representatives from:

- San Francisco Municipal Transportation Agency
- San Francisco Planning Department
- San Francisco County Transportation Authority
- Urban Ecology
- Metropolitan Transportation Commission
- Association of Bay Area Governments
- San Francisco Mayor's Office
- San Francisco Department of Public Health

- San Francisco Department of Public Works
- The Port of San Francisco
- San Francisco Redevelopment Agency
- Regional transit providers in the Eastern Neighborhoods (BART, Caltrain, GG Transit, SamTrans, AC Transit)

EASTERN NEIGHBORHOODS CITIZENS ADVISORY COMMITTEE

As part of the Eastern Neighborhoods Plan, an Eastern Neighborhoods Citizens Advisory Committee (CAC) will be established. The CAC shall be the central community advisory body charged with providing input to City agencies and decision makers on all implementation activities related to the Eastern Neighborhoods Area Plans.

Representation

The Board of Supervisors shall appoint 2/3 of the committee members and the Mayor shall appoint 1/3 of the committee members of the CAC, making appointments that represent the diversity of the plan area. It shall include, at a minimum, two representatives from each of these four geographic areas of the Plan Area (the neighborhoods of Eastern SoMa, Central Waterfront, Mission and Showplace Square/Potrero Hill); and other members shall represent citywide interests, including residential and business perspectives. The Citizens Advisory Committee shall be comprised of 9-15 community members from varying geographic, socio-economic, ethnic, racial, gender, and sexual orientations living or working within the plan area. The CAC should adequately represent key stakeholders including resident renters, resident homeowners, low-income residents, local merchants, established neighborhood groups within the plan area, and other groups identified through refinement of the CAC process. Each member appointed by the Board of Supervisors or Mayor will serve a two-year term, but the terms shall be staggered such that, of the initial membership, some members will be randomly selected to serve four year terms and some will serve two year terms. The Board of Supervisors or Mayor may renew a member's term.

EN TRIPS CAC Working Group

According to procedures set forth in by-laws adopted by the CAC, the CAC may, at its discretion, appoint committees or working groups to provide outreach to community members and input to City Departments or decision makers on specific topics or about issues in one of the individual neighborhoods comprising the Eastern Neighborhoods. Each of these committees or working groups shall contain at least one CAC member, but may also be comprised of individuals who are not members of the CAC.

EN TRIPS is a critical piece of the Eastern Neighborhoods Plan's transportation implementation program. The CAC may appoint a working group or committee to participate in the TRIPS process. This working group would monitor progress, provide feedback and act as a liaison to the larger community and CAC on relevant issues. The EN TRIPS working group would meet regularly in accordance with the study schedule and report back to the greater CAC, as necessary.

Consultant Task 2.b: Public Workshops

The Consultant will assist agency staff in preparing materials and staffing two series of public workshops that will be conducted at key points in the Study process as described below. Each series will consist of at least four workshops, so that there is at least one workshop in each of the four Eastern Neighborhoods. Agency staff will coordinate the room reservations for the workshops.

After the base and future year conditions report has been completed, the Consultant will assist agency staff to conduct Community Workshop Series #1. Community Workshop Series #1 will serve as a forum for the project team to: discuss Eastern Neighborhoods Plan transportation objectives; educate the public on the need for transportation improvements to support the anticipated development from the Plan; provide an overview of the Study process; present findings from the issues and opportunities analysis and the base and future year land use and transportation conditions report; and solicit community input on perceived issues, goals and objectives, and potential solutions.

The Consultant will assist staff in the presentation of findings from the circulation analysis / evaluation of alternatives as well as the key transportation and public realm improvement projects work at Community Workshop Series #2 for review and input. Community Workshop Series #2 will provide a forum for the project team to discuss the alternatives and illustrate how issues and considerations raised during Community Workshop Series #1 have been addressed in the key project designs. Utilizing interactive planning techniques, such as design charrettes, the Consultant will lead meeting attendees in an exercise to identify community priorities and preferences. This may result in a clear preference for alternative project designs for particular identified key projects, or it may result in a hybrid concept that combines some elements of two or more alternatives.

OPTIONAL Consultant Task 2.c: Stakeholder Meetings

The Consultant may assist agency staff to prepare for and/or attend stakeholder group meetings to discuss EN TRIPS and to bring information and public input back to the entire project team. Consultants should provide an hourly cost for assisting with this optional task.

NOTE: The Consultant should not budget for outreach mailings, reproduction costs, or translation services, all of which will be handled by SFMTA. SFMTA will also be responsible for creating a project website, finalizing public outreach materials and reports for public review.

Consultant Deliverable 2: Workshop Series Summaries and Outreach Program Final Report.

At the conclusion of each workshop series, the Consultant will provide a summary of the results. At the conclusion of the Study, Consultant will assemble a final report describing the Outreach Program conducted throughout the life of the project.

3: CURRENT CONDITIONS: ISSUES AND OPPORTUNITIES

Consultant role: to assist in the System Level Analysis work for this task and provide mapping and graphics assistance for Issues and Opportunities Report.

SFMTA role: to conduct Current Conditions Operational modeling, to perform Current Conditions Modal Analysis, and provide existing data and text to Consultants for Issues and Opportunities Report

SFCTA role: to assist SFMTA in delivery of this work product

Planning Department role: to assist SFMTA in delivery of this work product

Expected schedule: Issues and Opportunities Report by August 2009

In this task, the Agency staff and the Consultants will identify and summarize current transportation issues and opportunities for improving system performance and transportation circulation in the Eastern Neighborhoods, identifying existing system gaps and improvement needs as a foundation for the later identification of potential improvement projects.

Consultant Task 3: System Level Analysis

System Performance Evaluation Framework - Consultants will assist agency staff in identifying an evaluation framework for assessing current (and future) transportation conditions, including system level transportation performance measures, corridor based measures and modal performance measures. This section should also develop prioritization criteria or minimum standards for circulation. In this way, the framework will help inform policy decisions about the role and functions of streets in serving competing needs among local/regional trips, passenger vs. freight traffic, and users of the various modes, and guide project development and evaluation efforts.

Circulation Analysis – Consultants will assist in the identification of the current functions that key streets in the area are serving, including which streets are most heavily used for regional, inter-district/cross-town and local trips, for both automobile and transit modes, by time of day. SFMTA has already developed a SoMa SYNCHRO and SimTraffic model that includes current traffic volumes for the majority of the intersections. SYNCHRO and SimTraffic will also provide data on speeds, and traffic signal delay for vehicular traffic. Traffic signal timing can be adjusted in order to minimize congestion wherever possible. SFMTA staff will update and validate existing SYNCHRO, SimTraffic and VISSIM base models on select corridors and perform the analysis to identify the performance attributes of the above system performance evaluation framework, and provide a preliminary assessment of system performance. Consultants will then focus on how the overall circulation system could be improved by modifying the roles of key streets in the grid system.

Mode Specific Analysis

SFMTA staff, with assistance from Planning Department and SFCTA staff, will assess and synthesize current physical and regulatory conditions affecting the Study area with the goal of

identifying issues and opportunities for transportation improvements based on each of the following modes and subject areas:

Population and Employment Data – Existing demographic data from the Eastern Neighborhood Area Plans, the SFCTA’s model, as well as 2000 Census and more recent American Community Survey data to document the percentage of residents in each Eastern Neighborhoods census tract who travel to work by car or truck, carpool, transit, bicycle, walk or work at home. Vehicle availability data for each census tract will also be provided. Information about trip characteristics such as trip types and trip purposes by time of day will also be documented.

Transit – Drawing on the rich set of data from the Transit Effectiveness Project (TEP), existing public transit services will be summarized, including Muni routes, headways, and hours of operation, BART and Caltrain station locations, Golden Gate Transit, SamTrans and AC Transit services. Automated Passenger Count (APC) data will be reviewed to determine the maximum load point on Municipal Railway lines in the four study areas and the most and least heavily used transit stops. Travel time, crowding, and reliability of services in the study area will also be assessed.

Bicycles – Relying upon data from the San Francisco Bicycle Plan, this section will identify existing bicycle routes, as well as gaps in the existing route system and barriers to bicycling such as steep terrain, narrow streets, freeways and railroad tracks in the Eastern Neighborhoods Study areas. Bicycle volumes will be provided for selected roadways. This section will also include a bicycle collision analysis to identify any high-incident locations.

Pedestrians and Public Realm – The pedestrian section will identify the existing pedestrian infrastructure in the Eastern Neighborhoods. This will include information on existing midblock crossings, corner bulbs and other pedestrian amenities. The analysis will identify streets with pedestrian deficiencies such as missing or narrow sidewalks. Existing barriers to pedestrian circulation such as freeways, railroad tracks and steep topography will also be identified. The quality and availability of paving, lighting and street furniture will also be examined. This section will also include a pedestrian collision analysis to identify any issues and locations warranting traffic safety improvements.

Traffic - The traffic analysis shall describe the existing roadway system in terms of the street layout, topography, designated arterials, one-way versus two-way streets, roadway widths, number of lanes, average speeds, speed limits and traffic control devices. Demand and performance characteristics will also be summarized including existing intersection volumes and levels of service from the Eastern Neighborhood EIR. In locations within the SoMa grid or along other key corridors where existing data is either lacking or out-of-date, new traffic counts should be gathered. A collision analysis will be conducted to identify high-incident locations and potential solutions. Streets with high prevailing speeds that negatively affect pedestrians and bicyclists will be identified as candidates for potential traffic calming efforts. Underutilized or redundant streets that could provide open space or land exchange opportunities will also be identified.

Parking – The study will identify major off-street parking facilities and parking rates, existing on-street parking facilities and regulations (including parking meters, residential permit parking areas, time-limited areas and areas with no parking regulations other than street cleaning) typical parking occupancies, and areas with limited parking availability, such as Showplace Square and most parts of SoMa. Attention will be paid to collection of parking data near transit stations (such as Caltrain and BART) in Eastern Neighborhoods. This section will also document peak-period double-parking issues. The study will also coordinate with SFMTA’s SF*park* program to explore the introduction of parking management and pricing strategies for 1 or 2 identified priority focus areas in the Eastern Neighborhoods, such as Showplace Square.

Taxis – Existing taxi stands in the study area will be identified. Potential new locations will also be identified.

Shuttle Services and Transportation Demand Management (TDM) policies - Existing shuttle services operated by public (such as UCSF) and private operators (such as the China Basin Landing building, 600 Townsend Street, Adobe, the California College of Art, the San Francisco Academy of Art, and others) will be researched. This task will also include a survey of other TDM policies for office and residential uses. This effort will begin to identify shuttle service and TDM policy issues in the Eastern Neighborhoods to identify needs and opportunities for better management and operations.

Goods Movement – This section will describe major generators of truck travel and will describe routes with heavy truck movements as well as streets where trucks are currently restricted. Freight loading facilities including off-street sites and provisions to accommodate on-street truck loading will also be summarized.

Transportation Pipeline Projects – Building upon work that is already underway, this section will provide project descriptions and funding and implementation status of already planned, funded and/or environmentally-reviewed transportation infrastructure projects in the Eastern Neighborhoods.

Consultant Deliverable 3: Issues and Opportunities Report

The Consultant will compile the findings from the systems level analysis and the mode specific analysis, including the provision of transportation data and related mapping into an Issues and Opportunities Report.

4: TRAVEL DEMAND MODELING ANALYSIS AND ANALYSIS SUPPORT

Consultant roles: 1) to conduct post-processing of travel demand forecast model outputs; and 2) to prepare a report of the Preliminary Travel Demand Modeling Results

SFMTA role: to review and comment on deliverables

SFCTA roles: 1) to conduct the Phase 2 of the 2008 Eastern Neighborhoods Travel Behavior Survey; 2) to provide travel demand forecasting through use of the SFCTA's SF-CHAMP model

Planning Department role: to provide land use inputs for travel demand projections, review and comment on deliverables

Expected schedule: Preliminary Travel Demand Modeling Results by June 2009

The demographic analysis and travel demand forecasts will consider not only the Eastern Neighborhoods Plan defined Study area but the impacts of the surrounding high-growth areas such as Mission Bay, Transbay Terminal, Rincon Hill and Western SoMa. The base analysis year will be determined by the most current existing conditions data and the future analysis year will be 2030. The PM peak travel period will be the primary focus for analysis of traffic conditions.

Travel Behavior / Demographic Analysis

In an on-going effort being lead by the SFCTA, demographic travel data will be gathered through a survey process that will provide important data inputs for SFCTA's Travel Demand Model. Surveys will be targeted to a representative sample of residents and workers who will be selected by geographic locations and types of buildings. A broad cross-section of residents and workers will be included in the sampling plan. Surveys will ask for information on the respondents travel over the past week—purpose, mode, trips en route, parking and automobile availability, use of alternatives to the auto, and other key travel factors. Data from these surveys will provide input for a travel behavior and demographic analysis to consider future conditions in the Eastern Neighborhoods and surrounding areas. Consultant will produce maps show demographic trends geographically.

Travel Demand Forecasting

Evaluation will include use of an SFCTA model (SF-CHAMP) to forecast travel demand based on land use projections for year 2030 baseline and alternate scenarios developed through the Eastern Neighborhoods Plan and EIR. First-run modeling efforts will account for the expected land use changes in the Eastern Neighborhoods. However, the SF-CHAMP model may be re-run up to three times to provide outputs for traffic and operational analysis, as proposed transportation circulation alternatives and transportation improvement project alternatives are designed and vetted in future tasks.

Consultant Task 4: Travel Demand Modeling Post-Processing

The Consultant will conduct post-processing of travel demand forecast model outputs from the SFCTA model. The Consultant may need to reconcile model outputs with those performed for the Western SoMa EIR and Transbay Transit Center EIR, as well as the Eastern Neighborhoods

EIR completed in 2007.

Consultant Deliverable 4: Travel Demand Modeling Results.

The Consultant will compile the findings of the travel demand modeling post-processing work including the base and future year land use and transportation data and related mapping into a report.

5. FUTURE CONDITIONS: CIRCULATION AND OPERATIONAL NEEDS ANALYSIS

Consultant roles: 1) to conduct Future Conditions Circulation and Operational Needs Analysis; and 2) to prepare Base and Future Year Land use and Transportation Conditions Report

SFMTA role: to conduct the Future Conditions Operational Modeling using SYNCHRO, SimTraffic and/or VISSIM as necessary

SFCTA role: to assist in delivery of this work product

Planning Department role: to assist in delivery of this work product

Expected schedule: Base and Future Year Land Use and Transportation Conditions Report by October 2009

Consultant Task 5: Future Circulation and Operational Needs Analysis

Relying upon data collected in earlier tasks, the Consultant will conduct future conditions circulation and operational needs analysis in SoMa and on select priority corridors in the Eastern Neighborhoods with attention paid to issues related to the balance of regional and local travel needs and modal circulation (transit, pedestrians, bicycles, parking, and goods movement). This needs analysis will confirm whether the projects from the already-identified potential projects list can address the needs that are identified in this task. Any projects that do not appear to address the identified needs will either be modified or dropped from consideration.

Consultant Task 5.1 Overall Circulation – Based on land use and overall travel demand projections from Task 4, Consultant will assess the effectiveness of the current Eastern Neighborhoods circulation system (including pipeline projects) in serving the future transportation needs identified in Task 4. The assessment will determine whether changes are needed in the circulation system to accommodate future travel needs, and identify key priorities for needed changes. This assessment will inform and be conducted concurrently with the identification of needs for the various modes and issues listed below. To understand the effects of future traffic volume levels on travel times and transit service, SFMTA will conduct SYNCHRO, SimTraffic and VISSIM modeling on select corridors.

Consultant Task 5.2 Transit – Consultant will conduct a future transit service needs analysis including: 1) a preliminary line-by-line review of expected transit route structure serving the EN; 2) an assessment of transit operating needs based on 20 year growth anticipated in EN, including

increased headways to reduce overcrowding, fleet and facility implications; and 3) recommendations for incremental investments needed to improve transit travel time in order to offset increased service demand and cost for operations in the EN. Consultant will use the TEP's 5 year recommendations as a starting point in understanding the 20 year transit needs in the Eastern Neighborhoods, and will focus on specific transit corridors for which improving transit efficiency and reliability will be a high priority.

Consultant Task 5.3 Pedestrians – Consultant will conduct a pedestrian circulation and access needs analysis to analyze pedestrian connectivity and provide recommendations on locations where new pedestrian infrastructure improvements are needed to access key destinations based on current land uses, proposed EN land uses, existing transit stations and stops, and any new planned pedestrian facilities.

Consultant Task 5.4 Bicycles – Consultant will conduct a future bicycle circulation needs analysis. Relying upon the proposed bicycle network from the San Francisco Bicycle Plan and current bicycle network, staff will analyze future expected bicycle travel patterns in the Eastern Neighborhoods based on proposed EN land uses.

Consultant Task 5.5 Traffic – Consultant will conduct a traffic operations needs analysis resulting from 20 year growth in the Eastern Neighborhoods. SFMTA will provide an updated SYNCHRO model with current volumes, lane configurations and signal timing for the SoMa grid.

Consultant Task 5.6 Parking – Consultant will conduct a parking needs analysis to address the adequacy of the existing on-street parking supply to meet freight and passenger loading needs of adjacent land uses, visitor parking needs, particularly in commercial areas, residential parking needs, parking conflicts with transit vehicles and pedestrians as well the beneficial effect that on-street parking can have in separating moving traffic from pedestrians. Attention should be paid to the future need to provide additional taxi stands.

Consultant Task 5.7 Goods Movement – Consultant will conduct a needs analysis for the future growth of the goods movement industry and the impacts that the increased deployment of heavy trucks will have upon roadways in the Eastern Neighborhoods.

Consultant Deliverable 5: Base and Future Year Land Use and Transportation Conditions Report.

The Consultant will assemble findings from this and earlier tasks into a base and future year land use and transportation conditions report.

In coordination with the base and future year conditions report, the Consultant will assist agency staff to prepare materials for Community Workshop Series #1. Consultant will summarize public comments received.

6. CIRCULATION PLAN ALTERNATIVES ANALYSIS

Consultant role: 1) to propose preliminary circulation plan alternatives; and 2) to evaluate alternatives per System Performance Evaluation Framework

SFMTA role: to provide feedback to Consultants including an initial assessment of the operational and physical feasibility of preliminary circulation plan alternatives and project specific design concepts

SFCTA role: to conduct initial assessment of financial feasibility of project specific design concepts

Planning Department role: to assist in delivery of this work product

Expected schedule: Circulation Plan Alternatives and Preliminary Project Specific Design Concepts by December 2009

Consultant Task 6.1: Preliminary Circulation Plan Alternatives

The Consultant will propose preliminary options for a minimum of 3 circulation plan alternatives reflecting broad attributes of capacity, level of service, directionality and connectivity for the overall street network that respond to prior task analyses. The SFMTA will provide the Consultants with an initial assessment of the physical feasibility of the preliminary circulation plan alternatives. The task will include an evaluation of each alternative against the System Performance Evaluation Framework developed in Task 3. These findings will be reviewed by the TAC and CAC. Following an iterative process, the circulation plan should be refined in order to determine if negative impacts can be minimized or if substantial changes should be made in order to make the system functionally acceptable. A preferred circulation plan should emerge from this sub-task.

Consultant Task 6.2: Preliminary Project Specific Design Concepts

After the high-level circulation analysis identifies a preferred circulation plan, Consultants will develop a minimum of 4 project specific conceptual design concepts (including various alternatives, as appropriate) for the highest priority corridors/projects. Initial candidates for the project specific designs include:

1. Folsom Street Redesign
2. 16th Street Corridor Transit Improvements
3. Townsend Street Pedestrian Improvements
4. Other project(s) to be determined

SFMTA staff will assess the operational and physical feasibility of the proposed redesign alternatives. SFCTA will conduct initial assessments of financial feasibility. Findings from the operational needs analysis in the prior task should help to inform this task by calling attention to the impacts and benefits to transit, freight, parking, pedestrians, bicycles, and autos. The alternatives will also be vetted with citizen and agency representatives to ensure that the alternatives to be evaluated both address community desires and are physically and financially feasible.

This task will also produce order-of-magnitude cost estimates for use in the evaluation and

distinguish which potential improvements are more likely to be near-term or long-term.

Consultant Deliverable 6: Circulation Plan Alternatives and Preliminary Project Specific Design Concepts

The Consultant will compile the findings from this task, including related maps and graphics into a report detailing the Circulation Plan Alternatives and Preliminary Project Specific Design Concepts.

7. REFINE KEY TRANSPORTATION AND PUBLIC REALM IMPROVEMENT PROJECTS

Consultant role: 1) to provide peer review of SFMTA designs; and 2) to assist with production of maps and drawings for inclusion into a Key Eastern Neighborhoods Transportation and Public Realm Improvement Projects Report for public review

SFMTA role: 1) to lead the design work with the preparation of cross sections and intersection drawings for key projects; and 2) to provide cost estimates for key projects

SFCTA role: to assist SFMTA in delivery of this work product

Planning Department role: to assist SFMTA in delivery of this work product

Expected schedule: Key Eastern Neighborhoods Transportation and Public Realm Improvement Projects Report by February 2010

Based on preferences that will emerge from the stakeholder and public input process for EN TRIPS, this task will translate preliminary design concepts for the preferred alternative of several key transportation and public realm improvements identified in the earlier task into more fully developed designs. For the street reconfigurations, these conceptual designs will specify right-of-way and dimensions dedicated to auto/mixed-flow, buses, bicycles, pedestrians, and parking. For all projects, the conceptual designs will incorporate information about potential utility and drainage issues into design feasibility considerations and cost estimates.

Planning level costs will include costs for developing detailed designs, construction, construction management and on-going maintenance where applicable.

Consultant Task 7: Project Design Assistance

For each street, SFMTA will lead the effort to design priority projects to the level of conceptual design including the development of schematics showing cross sections of possible reconfigurations of the public right-of-way from property line to property line and the four approaches to each intersection. The cross sections will indicate the existing and proposed sidewalk widths, parking lane widths (if on-street parking is proposed), bicycle lane widths, transit lane widths and general traffic lane widths and turn lane widths (if proposed). The public right-of-way of nearly all South of Market streets is 82.5 feet, so production of cross sections for similar concepts on multiple SOMA streets should be replicable. On streets where the public

right-of-way changes from segment-to-segment, such as on 16th Street, separate cross section schematics will be prepared for each segment. Designs will also include signals and other traffic management regulations along with the physical design attributes. The Consultant should provide assistance to SFMTA with the production of maps and drawings that help the lay-audience understand the proposed project designs.

Consultant Deliverable 7: Key Eastern Neighborhoods Transportation and Public Realm Improvement Projects Report

The Consultant will assemble the project designs into a report for public review and comment at Community Workshop Series #2.

8. CREATE FUNDING AND IMPLEMENTATION STRATEGY

Consultant role: none for this task

SFMTA role: to jointly prepare Funding and Implementation Strategy Document

SFCTA role: to jointly prepare this work product

Planning Department role: to provide impact fee revenue projections and review and comment

Expected schedule: Funding and Implementation Strategy Document by February 2010

Based upon community input and emerging priorities, SFMTA and SFCTA will jointly prepare a complete funding and implementation analysis for the identified preferred alternative of each key Eastern Neighborhoods Transportation and Public Realm improvement project. Packaged together, this document will constitute a strategy based upon data and information developed through earlier tasks. The purpose of the analysis will be to fully understand project costs, determine existing and future funding opportunities (including impact fee revenue, grants, and any new Eastern Neighborhoods Plan-initiated financing programs) and develop an implementation timeline for these key implementation projects.

As determined in Task 6, key improvement projects will be grouped into two categories: Near-term and Long-term, which will be reflected in the funding and implementation strategy. Near-term Improvement Projects are those that most effectively respond to infrastructure needs that exist today or will exist within the next 5 years. The Long-term Improvement Projects are those that most effectively respond to anticipated infrastructure needs due to anticipated growth in the Eastern Neighborhoods in the next 5-20 years.

9. PREPARATION OF DRAFT EN TRIPS REPORT

Consultant role: to compile components of earlier deliverables, prepare additional maps and illustrations as needed into a Draft EN TRIPS Report for public review

SFMTA role: 1) to provide additional updated information to Consultants, as needed; 2) to provide additional technical proof-writing and graphic design assistance for report preparation; and 3) to pay for reproduction and report distribution costs

SFCTA role: to review and comment

Planning Department role: to review and comment

Expected schedule: Draft EN TRIPS Report by March 2010

Consultant Task 9: Report Preparation Assistance

The Consultant will assist SFMTA staff in the preparation of a complete Eastern Neighborhoods Transportation Implementation Planning Study report that draws from the analysis and findings completed in earlier tasks into a public review document. The EN TRIPS report will serve as the blueprint for guiding the development of the critical new transportation infrastructure within the Eastern Neighborhoods for the next 20 years. SFMTA staff will provide the majority of the text for the report, and the Consultant will assist with report production particularly the preparation of maps and illustrations that help the lay-audience understand the Study.

The Eastern Neighborhoods Transportation Implementation Planning Study report that draws from the analysis and findings completed in earlier tasks into a public review document. The EN TRIPS report will serve as the blueprint for guiding the development of the critical new transportation infrastructure within the Eastern Neighborhoods for the next 20 years. The plan will include the following elements:

Community Involvement Section - Description of the EN TRIPS process and the role the public played in creating the report.

Goals and Policies Section – As EN TRIPS is a companion study to the Eastern Neighborhoods Community Plans, this section will include an overall description of the objectives, policies and implementation action items that were developed for transportation through the Eastern Neighborhoods planning process. This section will describe the existing goals, objectives and policies that create a framework for developing a sustainable transportation network for the Eastern Neighborhoods. This section will also discuss existing adopted policies such as San Francisco's "Transit First Policy" which gives top priority to public transit investments as the centerpiece of the city's transportation policy and adopting street capacity and parking policies to discourage increases in automobile traffic. This policy encourages multi-modalism including the use of transit and other transportation choices, including bicycling and walking, rather than the continued use of the single-occupant vehicle.

Land Use Section - Description of anticipated increase in new housing units including affordable housing, jobs and a mix of other uses within the EN planning area. As affordable housing is a

major consideration of the Eastern Neighborhoods plans, innovative alternatives to existing inclusionary requirements have been developed aimed at achieving even higher levels of housing affordability.

Parking Demand Analysis – Description of the parking management and pricing strategies developed by SFMTA’s *SFpark* program and their applicability to the Eastern Neighborhoods.

Circulation and Connectivity - Address transit, pedestrian, bicycle, auto, and goods movement circulation through the EN area, estimating the number of future trips by each mode, and providing projections of future needs within the Study area. This section includes a qualitative discussion of accessibility and visitability that reflects the City’s strong policies and guidelines regarding accessibility, which is an integral part of any new or redesigned transportation infrastructure.

Detailed Analysis of Select Priority Corridors – Inventory of key Eastern Neighborhood priority corridors based on street archetypes and functions design guidelines. Identifies preliminary street redesign options for select priority corridors based on preferred circulation plan alternative.

Key Transportation Infrastructure Projects – Identifies the preferred alternatives of each identified key transportation and public realm improvement projects needed to support the anticipate growth from the Eastern Neighborhoods land use changes.

Funding and Implementation – Identifies full costs needed to implement the key identified projects and the improvement phasing and funding strategies necessary to implement these projects.

Consultant Deliverable 9: Draft EN TRIPS Report

NOTE: The Consultant should not budget for report reproduction costs, or mailings, all of which will be handled by SFMTA.

10. DRAFT ENVIRONMENTAL REVIEW DOCUMENTS FOR SELECT PROJECTS

Consultant role: to prepare draft environmental review document(s) addressing the environmental impacts of, at a minimum, one top priority project; an optional task is to prepare draft environmental review documents for additional high priority projects, as funds allow .

SFMTA role: to assist in the determination of the required level of environmental review

SFCTA role: to assist in the determination of the required level of environmental review

Planning Department role: Major Environmental Analysis (MEA) staff to conduct evaluation of required level of environmental review; provide input and assistance in coordination with Consultant

Expected schedule: Draft Environmental Review Documents by September 2010

The purpose of this task is to prepare environmental documents that meet the requirements of both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). All planning and technical analysis conducted in earlier tasks should be consistent with and complementary to the requirements of the environmental review that will be required to environmentally clear key projects through this process.

To successfully manage and complete the environmental review process for EN TRIPS, the Consultant should develop a comprehensive plan of action, and provide for an adequate level of consultant support. The SFMTA will enlist the assistance of other stakeholders, primarily the San Francisco Planning Department - Major Environmental Analysis (MEA) unit, on the Environmental Review process and associated technical background studies. The administrative and published drafts of the background studies and environmental documents will be prepared and distributed by the selected consultant firm, under the direction of staff at SFMTA and MEA.

The SFMTA anticipates close collaboration with MEA throughout the project phases, with emphases on the early scoping of the document. During the process, the MEA will provide information on the area and furnish available data as needed to complete the environmental documents. The consultant will be expected to perform and deliver the draft and final environmental documents as proposed within budget and on schedule. The SFMTA will require regular progress reports be made during this task.

Consultant Task 10.a: Prepare Draft Environmental Review Documents

The exact extent of the environmental review required will depend upon the final list of key identified improvement projects. Consultants should expect to prepare draft environmental review documents addressing the environmental impacts of, at a minimum, one highest priority project. Lower priority projects which have not been environmentally reviewed through a separate process and that are determined to have no significant environmental impacts will be environmentally cleared with the appropriate CEQA documents including Categorical Exemptions, Negative Declarations, and Mitigated Negative Declarations. The Consultant's proposal should budget for multiple drafts of necessary background studies and environmental review documents prior to issuance.

OPTIONAL Consultant Task 10.b: Prepare EIR for Additional Select Project(s)

Additional key identified high priority projects that are determined to require an Environmental Impact Report may not be fully environmentally cleared through the EN TRIPS environmental review process unless additional funding for a required EIR can be secured. Consultants should provide an optional task budget for an EIR to address additional high priority projects. Otherwise, the Final EN TRIPS report will include information regarding the additional cost and timeline to complete the required environmental review of these key projects in the Funding and Implementation Strategy section.

The environmental review shall address, at a minimum, the following areas:

Land Use Consistency and Compatibility – Evaluate the proposed project's consistency with

adopted City plans and policies.

Transportation and Circulation – A traffic study analyzing traffic and circulation issues, impacts on existing and proposed bikeways, transit systems and pedestrians, and impact on pedestrian safety.

Air Quality – Address the project’s impact on air pollutants and their precursors as well as localized carbon monoxide impacts utilizing the appropriate air quality modeling tools. The analysis will address both operational including vehicular emissions (long-term) and construction level (short-term) impacts.

Noise/Vibration – Evaluate the potential impacts on ambient noise levels from any construction related noise, as well as potential impacts on ambient noise from the proposed project.

Biological Resources – Analyze the project’s short-term (construction) as well as long-term impacts on biological resources including any special status species.

Toxics – Evaluate sites in the plan area that are potentially contaminated. Potential impacts will be identified and analyzed. Mitigation measures will be developed to ensure that proposed development can occur in the area.

Hydrology/Drainage/Water Quality/Sanitary Sewer System – Analyze and address the project’s construction and operational impacts to hydrology, drainage, the sewer system, and water quality in the area.

Public Services – Evaluate the potential impacts to public services such as schools, solid waste, police, fire and utilities.

Cultural/Historical Resources – Evaluate potential impacts to cultural and historical resources in the proposed plan area. Mitigation measures will be identified to reduce potential impacts.

Discussion of Growth Inducing and Cumulative Impacts – Address cumulative impacts of the project. The EIR shall discuss cumulative impacts when the project’s incremental effect is considered cumulatively considerable.

Discussion of Alternatives – Describe a range of reasonable alternatives for the project. Evaluate the comparative merits of the alternatives, including the “No Project” alternative.

Mitigation Monitoring Plan – A Mitigation Monitoring Plan will be developed for project implementation.

The project team will provide a public review and comment period per CEQA/NEPA following preparation of draft environmental review documents to receive comments and input from the public.

Consultant Deliverable 10: Draft Environmental Review Documents

11. FINAL EN TRIPS REPORT

Consultant role: to assist with any final revisions to EN TRIPS Report based on public review

SFMTA role: 1) to make final revisions to the EN TRIPS Report based on public review; and 2) to pay for reproduction and report distribution costs

SFCTA role: to review and comment

Planning Department role: to review and comment

Expected schedule: Final EN TRIPS Report by December 2010

Consultant Task 11: Final Report Preparation Assistance

SFMTA staff will make any final revisions or modifications to the EN TRIPS Report and prepare a camera-ready copy and coordinate printing of the documents. The Consultants should be available if assistance with these final revisions is required.

12. FINAL ENVIRONMENTAL REVIEW DOCUMENTS FOR SELECT PROJECTS

Consultant role: to prepare final environmental review documents

SFMTA role: to review and comment

SFCTA role: to review and comment

Planning Department role: Major Environmental Analysis (MEA) staff to issue final environmental review documents

Expected schedule: Final Environmental Review Documents by December 2010

Consultant Deliverable 12: Final Environmental Review Documents

The Consultant will make any final revisions or modifications to the environmental review documents for key projects where draft documents were issued and prepare a camera-ready copy and coordinate the printing of the documents with City and County staff.

BUDGET SUMMARY

TASK ITEM	SFMTA Consultant	SFMTA Staff	SFCTA	Planning Dept
2 Conduct Public Outreach Program	\$24,500	\$51,090	\$7,500	\$6,325
3 Current Conditions: Issues and Opportunities	\$99,500	\$62,400	\$15,000	\$11,500
4 Travel Demand Modeling Analysis and Analysis Support	\$16,750	\$16,250	\$85,050	\$11,500
Travel Behavior Survey / Demographic analysis *	\$0	\$9,750	\$70,050	\$5,750
Travel Demand Forecasting	\$16,750	\$6,500	\$15,000	\$5,750
5 Future Conditions: Needs Analysis	\$62,000	\$35,750	\$5,625	\$2,875
6 Circulation Plan Alternatives Analysis	\$111,000	\$62,400	\$15,000	\$4,025
7 Refine Key Project Designs	\$36,000	\$121,550	\$26,700	\$14,950
8 Create funding and implementation strategy	\$0	\$36,400	\$12,000	\$7,475
9 Prepare Draft EN TRIPS Report	\$18,600	\$43,160	\$7,500	\$5,750
10 Draft Environmental Review Documents	\$37,875	\$9,750	\$3,000	\$11,270
11 Final EN TRIPS Report	\$6,200	\$14,300	\$3,750	\$2,300
12 Final Environmental Review Documents	\$12,625	\$3,250	\$1,875	\$3,680
Contingency	\$38,255	\$41,067	\$16,470	\$7,349
TOTAL	\$463,305	\$497,367	\$199,470	\$88,999

**Appendix B
SAMPLE INVOICE**

AGREEMENT REFERENCE INFORMATION	
PURPOSE:	EN TRIPS
PERIOD OF PERFORMANCE:	March 1, 2009 to December 30, 2010
NO.:	# _____
AMOUNT:	\$XX,XXX.XX

INVOICE

DATE: March 31, 2009

INVOICE NO.: (enter your agency's invoice number here)

PERIOD INVOICED: January 1, 2008 to March 31, 2008

CHARGES

LABOR

HOURS	Task 1	Task 2	Task 3	Total Hours	Hourly Rate	Total Charges
Person 1						
Person 2						
TOTAL LABOR						

TOTAL, THIS INVOICE \$XXX,XXX

INVOICED TO DATE \$ZZZ,ZZZ

OUTSTANDING (invoiced but not received as of invoice date) \$XXX,XXX

TOTAL OUTSTANDING (outstanding plus current invoice) \$XZX,ZZZ

Submitted by: _____
Name, Title of Project Manager

APPENDIX C
CERTIFICATION OF CONSULTANT
(Caltrans 10-F)

Exhibit 10-F Certification of Consultant, Commissions & Fees

Certification of Consultant

I HEREBY CERTIFY that I am the _____, and duly authorized representative of the firm of _____, whose address is _____, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable state and federal laws, both criminal and civil.

(Date)

(Signature)

APPENDIX D
CERTIFICATION OF LOCAL AGENCY
(Caltrans 10-G)

Exhibit 10-G Certification of Local Agency

Certification of Local Agency

I HEREBY CERTIFY that I am the _____ of the
_____ (local agency) _____, and that the consulting firm
of
_____, or its representative has not been required
(except
as herein expressly stated), directly or indirectly, as an express or implied condition in
connection
with obtaining or carrying out this Agreement to:

- (a) employ, retain, agree to employ or retain, any firm or person, or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution,
donation, or consideration of any kind.

I acknowledge that this Certificate is to be made available to the California Department of
Transportation (Caltrans) in connection with this Agreement involving participation of federal-
aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

(Date)

(Signature)

APPENDIX E
FINAL COST PROPOSAL
(Caltrans 10-H)

Exhibit 10-H Sample Cost Proposal
Sample Cost Proposal (Example #1)

Contract No. _____

Date _____

Consultant _____

DIRECT LABOR

Classification	Name	Range	Hours	Initial Hourly Rate	Total
Project Manager	_____	_____	_____	@ _____	\$ _____
Highway Engineer	_____	_____	_____	@ _____	\$ _____
	_____	_____	_____	@ _____	\$ _____
Bridge Engineer	_____	_____	_____	@ _____	\$ _____
	_____	_____	_____	@ _____	\$ _____
Technician	_____	_____	_____	@ _____	\$ _____
Project Manager	_____	_____	_____	@ _____	\$ _____
	_____	_____	_____	@ _____	\$ _____
	_____	_____	_____	@ _____	\$ _____
	_____	_____	_____	@ _____	\$ _____

Subtotal Direct Labor Costs \$ _____
 Anticipated Salary Increases \$ _____
 Total Direct Labor Costs \$ _____

Fringe Benefits	Rate	Total
	_____ %	\$ _____
Total Fringe Benefits		\$ _____

Indirect Costs		
Overhead	_____ %	\$ _____
General and Administrative	_____ %	\$ _____
Total Indirect Costs		\$ _____

FEE (Profit) \$ _____

OTHER COSTS

Travel Costs	\$ _____
Equipment and Supplies (Itemize)	\$ _____
Other Direct Costs (Itemize)	\$ _____
Total Other Costs	\$ _____

Subcontractor Costs (attach detailed cost estimate for each subcontractor) \$ _____

TOTAL COST \$ _____

Sample Cost Proposal (Example #2)

	Fringe Benefit %		Overhead %		General Administration %		Combined %
NORMAL		+		+		=	
OVERTIME		+		+		=	
			FEE %				

BILLING INFORMATION

CALCULATION INFORMATION

Name/Classification ¹	Hourly Billing Rates			Effective date of hourly rate		Actual/average hourly rate ²	% or \$ increase	Hourly range for class
	Straight	OT(1.5x)	OT(2x)	From	To			

- Names and classifications of team members at a level of _____ must be listed. FOR ALL OTHER EMPLOYEES USE CLASSIFICATIONS ONLY.
- For named employees enter the actual hourly rate. For classifications only, list the average hourly rate for that classification.

APPENDIX F

**NOTICE TO BIDDERS/PROPOSERS-DISADVANTAGED
BUSINESS ENTERPRISE INFORMATION**

(Caltrans 10-I)

EXHIBIT 10-I Notice to Bidders/Proposers Disadvantaged Business Enterprise Information**LOCAL AGENCY LETTERHEAD
(DATE)****NOTICE TO BIDDERS/PROPOSERS
DISADVANTAGED BUSINESS ENTERPRISE INFORMATION****1. TERMS AS USED IN THIS DOCUMENT**

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

2. AUTHORITY AND RESPONSIBILITY

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

3. SUBMISSION OF DBE INFORMATION

A "Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information" form will be included in the Agreement documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

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

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- D. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- E. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- F. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Bidder/Proposer may call (916) 440-0539 for web or download assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.
 - Click on the link in the left menu titled Find a Certified Firm
 - Click on Query Form link, located in the first sentence
 - Click on Certified DBE's (UCP) located on the first line in the center of the page
 - Click on Click To Access DBE Query Form
 - Searches can be performed by one or more criteria
 - Follow instructions on the screen
 - "Start Search," "Requery," "Civil Rights Home," and "Caltrans Home" links are located at the bottom of the query form

C. How to Obtain a List of Certified DBEs without Internet Access

DBE Directory: If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

6. WHEN REPORTING DBE PARTICIPATION, MATERIAL OR SUPPLIES PURCHASED FROM DBES MAY COUNT AS FOLLOWS:

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

7. WHEN REPORTING DBE PARTICIPATION, PARTICIPATION OF DBE TRUCKING COMPANIES MAY COUNT AS FOLLOWS:

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.
- B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.
- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

- D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
- E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

APPENDIX G

STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION

(Caltrans 10-J)

EXHIBIT 10-J STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION**STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION****1. Subcontractors**

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Agency and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the Agency for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the Agency's obligation to make payments to the Contractor.
- B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- C. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the Agency.
- D. Any substitution of subcontractors must be approved in writing by the Agency's Contract Manager in advance of assigning work to a substitute subcontractor.

2. Disadvantaged Business Enterprise (DBE) Participation

- A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Bidders who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.
- C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

3. Performance of DBE Contractors and other DBE Subcontractors/Suppliers

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

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

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

5. Prompt Payment of Funds Withheld to Subcontractors

(Local agency to use either A,B, or C below; delete the other two.)

- A. No retainage will be withheld by the Agency from progress payments due the prime contractor. Retainage by the prime contractor or subcontractors is prohibited, and no retainage will be held by the prime contractor from progress due subcontractors. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement 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 or deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.
- B. No retainage will be held by the Agency from progress payments due the prime contractor. Any retainage held by the prime contractors or subcontractors from progress payments due subcontractors shall be promptly paid in full to subcontractors within 30 days after the subcontractor's work is satisfactorily completed. Federal law (49CFR26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime 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.
- C. 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 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 law (49CFR26.29) requires that any delay or postponement of payment over 30-days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime 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.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

6. DBE Records

- A. The Contractor shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

- B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE)," CEM-2402F (Exhibit 17-F in Chapter 17 of the LAP), certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to the Contract Manager.

1) Prior to the fifteenth of each month, the Contractor shall submit documentation to the Agency's Contract Manager showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Agency's Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

(2) The Contractor shall also submit to the Agency's Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans "Monthly DBE Trucking Verification, CEM-2404(F) form provided to the Contractor by the Agency's Contract Manager.

7. DBE Certification and De-certification Status

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

When Reporting DBE Participation, Material or Supplies purchased from DBEs may count as follows:

- A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

(Add the following to contracts which require trucking)

When Reporting DBE Participation, Participation of DBE trucking companies may count as follows:

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.
- B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.
- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
- D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
- E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- F. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

APPENDIX H

**MASTER AGREEMENT ADMINISTERING AGENCY-STATE AGREEMENT
FOR FEDERAL-AID PROJECTS**

(Caltrans 4-C)

MASTER AGREEMENT
ADMINISTERING AGENCY-STATE AGREEMENT
FOR
FEDERAL-AID PROJECTS

DISTRICT ADMINISTERING AGENCY

AGREEMENT NO.

This AGREEMENT, made effective this _____ day of _____, 1996, is by and between the Agency Name, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through the California Department of Transportation (Caltrans), hereinafter referred to as "STATE."

WITNESSETH:

WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act of 1991 to fund programs which include, but are not limited to, the Surface Transportation Program (RSTP), the Activities Program (TE), and the Bridge Replacement and Rehabilitation Program (HBRR) (collectively the "Programs"); and

WHEREAS, the Legislature of the State of California has enacted legislation by which certain Federal funds (RSTP and CMAQ) may be made available for use on local transportation facilities of public entities qualified to act as recipients of these Federal funds in accordance with the intent of Federal law; and

WHEREAS, before Federal-aid will be made available for a specific Program project, ADMINISTERING AGENCY and STATE are required to enter into an agreement relative to prosecution of said project and maintenance of the completed facility.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - PROJECT ADMINISTRATION

1. This AGREEMENT shall have no force or effect with respect to any Program project unless and until a project-specific Program Supplement to this AGREEMENT for Federal-aid Projects, hereinafter referred to as "PROGRAM SUPPLEMENT," has been executed.

2. The term "PROJECT," as used herein, means that authorized project financed in part with Federal funds as further described in an "Authorization to Proceed" document executed by STATE, in the subsequent specific PROGRAM SUPPLEMENT.

3. The Financial commitment of STATE administered Federal funds will occur only upon the execution of this AGREEMENT, and the execution of each project-specific PROGRAM SUPPLEMENT and E-76.

4. ADMINISTERING AGENCY further agrees, as a condition to payment of funds obligated to a PROJECT, to comply with all the agreed-upon Special Covenants or Remarks attached to the PROGRAM SUPPLEMENT identifying and defining the nature of the specific PROJECT.

5. The PROGRAM SUPPLEMENT shall designate the party responsible for implementing the various phases of the PROJECT, the Federal funds requested, and the matching funds to be provided by ADMINISTERING AGENCY and/or STATE. Adoption of the PROGRAM SUPPLEMENT by ADMINISTERING AGENCY and approval by STATE shall cause such PROGRAM SUPPLEMENT to be executed and be a part of this AGREEMENT as though fully set forth herein. Unless otherwise expressly delegated in a resolution by the ADMINISTERING AGENCY's governing body, the PROGRAM SUPPLEMENT shall be approved and managed by the ADMINISTERING AGENCY's governing body.

6. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual, hereafter referred to as REENGINEERED PROCEDURES) relating to the Federal-aid Program, all Title 23 Federal requirements, and all applicable Federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise designated in the approved PROGRAM SUPPLEMENT.

7. If PROJECT involves work on the State highway system, it shall also be the subject of a separate standard form of encroachment permit and, where appropriate, a cooperative agreement between STATE and ADMINISTERING AGENCY to determine how the PROJECT is to be constructed.

8. If PROJECT is not on STATE-owned right of way, PROJECT shall be constructed in accordance with REENGINEERED PROCEDURES. The REENGINEERED PROCEDURES describe minimum statewide design standards for local agency streets and roads. The REENGINEERED PROCEDURES for projects off the National Highway System (NHS) allow the STATE to accept either the minimum statewide design standards or ADMINISTERING AGENCY-approved geometric design standards. Also, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, and materials sampling and testing quality assurance programs that meet the conditions described in the REENGINEERED PROCEDURES.

9. When PROJECT is not on the State highway system but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the parties may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.

10. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. As provided in the REENGINEERED PROCEDURES, work may be performed by a consultant(s), provided a fully qualified and licensed employee of ADMINISTERING AGENCY is in responsible charge.

11. The Congress of the United States, the Legislature of the State of California, and the Governor of the State of California, each within their respective jurisdiction, have prescribed certain employment practices with respect to work financed with Federal or State funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit A attached hereto) whenever State funds finance part of the PROJECT, and the NONDISCRIMINATION ASSURANCES (Exhibit B attached hereto). ADMINISTERING AGENCY further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of work connected with the PROJECT shall incorporate Exhibits A (whenever State funds finance part of the PROJECT) and Exhibit B (with third party's name replacing ADMINISTERING AGENCY) as parts of such agreement.

ARTICLE II - RIGHTS OF WAY

1. No contract for the construction of a Federal-aid PROJECT shall be awarded until the necessary rights of way have been secured. Prior to the advertising for construction of the PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract.

2. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability which may result in the event the right of way for a PROJECT is not clear as certified. The furnishing of right of way as provided for herein includes, in addition to all real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of damages to real property not actually taken but injuriously affected by PROJECT. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of the PROJECT because utility facilities have not been removed or relocated, or because rights of way have not been made available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.

3. Subject to STATE approval and such supervision as is required in REENGINEERED PROCEDURES over ADMINISTERING AGENCY's right of way acquisition procedures, ADMINISTERING AGENCY may claim reimbursement from Federal funds for expenditures to purchase only necessary rights of way included in PROJECT after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.

4. When real property rights are to be acquired by ADMINISTERING AGENCY for a PROJECT, said ADMINISTERING AGENCY must carry out that acquisition in compliance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

5. Whether or not Federal-aid is to be requested for right of way, should ADMINISTERING AGENCY, in acquiring right of way for PROJECT, displace an individual, family, business, farm operation, or non-profit organization, relocation payments and services will be provided as set forth in Chapter 5 of Title 23, U.S. Code. The public will be adequately informed of the relocation payments and services which will be available, and, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from his/her dwelling or to move his/her business or farm operation without at least 90-days written notice from ADMINISTERING AGENCY. ADMINISTERING AGENCY will provide STATE with specific assurances, on each portion of the PROJECT, that no person will be displaced until comparable decent, safe and sanitary replacement housing is available within a reasonable period of time prior to displacement, and that ADMINISTERING AGENCY's relocation program is realistic and adequate to provide orderly, timely and efficient relocation of displaced persons for the PROJECT as provided in 23 CFR 740 H and 49 CFR 24.

6. In all real property transactions acquired for the PROJECT, following recordation of the deed or such other recorded instrument evidencing title in the name of the ADMINISTERING AGENCY or their assignee, there shall also be recorded a separate document which is an "Agreement Declaring Restrictive Covenants." Said Agreement Declaring Restrictive Covenants will incorporate the assurances included within Exhibits A and B and Appendices A, B, C and D, as appropriate, when executed by ADMINISTERING AGENCY.

ARTICLE III - MANAGEMENT AND MAINTENANCE OF PROPERTY

1. ADMINISTERING AGENCY will maintain and operate the PROJECT property acquired, developed, rehabilitated, or restored for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the property may transfer this obligation and responsibility to maintain and operate the property to another public entity.

2. Upon ADMINISTERING AGENCY acceptance of the completed Federal-aid construction contract or upon contractor being relieved of the responsibility for maintaining and protecting a portion of the work, the agency having jurisdiction over the PROJECT shall maintain the completed work in a manner satisfactory to the authorized representatives of STATE and the United States. If, within 90 days after receipt of notice from STATE that a PROJECT, or any portion thereof, under ADMINISTERING AGENCY's jurisdiction is not being properly maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future Federal-aid projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of maintenance satisfactory to STATE and the Federal Highway Administration. The provisions of this section shall not apply to a PROJECT, which has been vacated through due process of law.

3. The maintenance referred to in paragraph 2, above, includes not only the physical condition of the PROJECT but its operation as well. PROJECT shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as the project requires. Said maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

ARTICLE IV - FISCAL PROVISIONS

1. The PROJECT, or portions thereof, must be included in a federally-approved statewide Transportation Improvement Program (FSTIP) prior to ADMINISTERING AGENCY submittal of the "Request for Authorization."

2. State and Federal funds will not participate in PROJECT work performed in advance of approval of the "Authorization to Proceed." The parties shall execute a PROGRAM SUPPLEMENT between STATE and ADMINISTERING AGENCY subsequently incorporating the "Authorization to Proceed."

3. ADMINISTERING AGENCY may submit invoices in arrears for reimbursement of participating PROJECT costs on a monthly or quarterly progress basis once the PROJECT PROGRAM SUPPLEMENT has been executed by STATE and the project has been authorized and obligated by FHWA. The total of all amounts claimed, plus any required matching funds, must not exceed the actual total allowable costs of all completed engineering work, right of way acquisition, and construction.

4. Invoices shall be submitted on ADMINISTERING AGENCY letterhead and shall include this AGREEMENT number, Federal-aid project number, and Progress billing number for the PROJECT, and shall be in accordance with the LAPM.

5. The estimated total cost of PROJECT, the amounts of Federal-aid programmed, and the matching amounts agreed upon may be adjusted by mutual consent of the parties hereto in a Finance Letter/Detail Estimate and an E-76 document which are to be considered as part of this AGREEMENT. Federal-aid program amounts may be increased to cover PROJECT cost increases only if such funds are available and FHWA concurs with that increase.

6. When additional federal-aid funds are not available, the ADMINISTERING AGENCY agrees that the payment of federal funds will be limited to the amounts approved by the E-76 or its modification and agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY funds.
7. ADMINISTERING AGENCY shall use its own nonfederal-aid funds to finance the local share of eligible costs and all expenditures ruled ineligible for financing with federal funds. STATE shall make the determination of ADMINISTERING AGENCY cost eligibility for federal fund financing.
8. Any overpayment to ADMINISTERING AGENCY of amounts invoiced shall be returned to STATE by ADMINISTERING AGENCY upon written demand.
9. Should ADMINISTERING AGENCY failed to refund all moneys due STATE as provided hereunder or should ADMINISTERING AGENCY breach this Agreement by failing to complete PROJECT, then, within 30 days of demand, or within such other period as may be agreed to in writing between the parties hereto, STATE, acting through the State Controller, the State Treasurer, or any other public agency, may withhold or demand a transfer of an amount equal to the amount owed to STATE from future apportionment, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other funds and/or may withhold approval of future ADMINISTERING AGENCY Federal-aid projects.
10. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 9, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities to recover all funds provided by STATE hereunder.

ARTICLE V - RETENTION OF RECORDS/AUDITS

1. For the purpose of determining compliance with Public Contract Code Section 10115, et. seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et, seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 10532, ADMINISTERING AGENCY and any third party under contract with ADMINISTERING AGENCY shall retain all original records to the project financed with federal funds and shall make records available upon request by Federal and State representatives. Following final settlement of the project costs with FHWA, the records/documents may be microfilmed by the ADMINISTERING AGENCY, but in any event shall be retained for a period of three years from STATE payment of the final voucher, or a four-year period from the date of the final payment under the contract, whichever is longer. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later (49 CFR 18.42[b][2]). ADMINISTERING AGENCY shall retain records/documents longer if required in writing by STATE.
2. Per the Single Audit Act of 1984, any ADMINISTERING AGENCY that receives \$300,000.00 or more per fiscal year in Federal Financial Assistance shall have an audit performed by an independent audit firm per the Single Audit Act - (see OMB-A128, "Audits of State and Local Governments").

ARTICLE VI - FEDERAL LOBBYING ACTIVITIES CERTIFICATION

1. By execution of this AGREEMENT, ADMINISTERING AGENCY certifies to the best of the signatory officer's knowledge and belief that:

A. No STATE or federal appropriated funds have been paid or will be paid, by or on behalf of ADMINISTERING AGENCY, to any person for influencing or attempting to influence an officer or employee of any STATE or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any STATE or Federal contract including this Agreement; the making of any STATE or federal loan; the entering into of any cooperative contract; and the extension, continuation, renewal, amendment, or modification of any STATE or Federal contract, grant, loan, or cooperative contract.

B. 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 Federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this Agreement, grant, local, or cooperative contract; ADMINISTERING AGENCY shall complete and submit Standard Form-LLL, "Disclosure Form to Rep Lobbying," in accordance with the form instructions.

C. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any party 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.

2. ADMINISTERING AGENCY also agrees by signing this document that the language of this certification will be included in all lower tier sub-agreements which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

ARTICLE VII - MISCELLANEOUS PROVISIONS

1. Neither STATE nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done, or omitted to be done, by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction delegated to ADMINISTERING AGENCY under this AGREEMENT. It is understood and agreed that pursuant to Government Code Section 895.4, ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE, its officers, and employees from all claims, suits or actions of every name, kind and description brought for, or on account of, injury (as defined in Government Code Section 810.8) occurring by reason of anything done, or omitted to be done, by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction delegated to ADMINISTERING AGENCY under this Agreement. STATE reserves the right to represent itself in any litigation in which STATE's interests are at stake.

2. Neither ADMINISTERING AGENCY, nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done, or omitted to be done, by STATE under, or in connection with, any work, authority, or jurisdiction delegated to STATE under this AGREEMENT. It is also understood and agreed that pursuant to Government Code Section 895.4, STATE shall fully indemnify and hold ADMINISTERING AGENCY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done, by STATE under, or in connection

with any work, authority, or jurisdiction delegated to STATE under this Agreement. ADMINISTERING AGENCY reserves the right to represent itself in any litigation in which ADMINISTERING AGENCY's interests are at stake.

3. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of STATE.

4. STATE may terminate this AGREEMENT with ADMINISTERING AGENCY should ADMINISTERING AGENCY fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, STATE may proceed with the PROJECT work in any manner deemed proper by STATE. If STATE terminates this AGREEMENT with ADMINISTERING AGENCY, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under this AGREEMENT prior to termination, provided, however, that the cost of PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY under this AGREEMENT, and the balance, if any, shall then be paid ADMINISTERING AGENCY upon demand.

5. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole, or in part.

6. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or Agreement not incorporated herein shall be binding on any of the parties hereto.

7. ADMINISTERING AGENCY warrants, by execution of this AGREEMENT that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY, for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the work actually performed, or in STATE's discretion, to deduct from the price of consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8. In accordance with Public Contract Code Section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two-year period, because of ADMINISTERING AGENCY's failure to comply with an order of a Federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.

9. ADMINISTERING AGENCY shall disclose any financial, business or other relationship with STATE or the FHWA that may have an impact upon the outcome of this AGREEMENT. ADMINISTERING AGENCY shall also list current contractors who may have a financial interest in the outcome of this AGREEMENT.

10. ADMINISTERING AGENCY hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of PROJECT under this AGREEMENT.

11. ADMINISTERING AGENCY warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the work actually performed, or to deduct from the PROGRAM SUPPLEMENT

price, or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

12. This Agreement is subject to any additional restrictions, limitations, conditions or any statute enacted by the State Legislature that may affect the provisions, terms or funding of this AGREEMENT in any manner.

ARTICLE VIII - TERMINATION OF AGREEMENT

1. This Agreement and any PROGRAM SUPPLEMENT(s) executed under this AGREEMENT shall terminate upon 60 days prior written notice by STATE.

2. Each separate PROGRAM SUPPLEMENT shall separately establish the term and funding limits for each described PROJECT funded under this federal-aid program. No STATE or FHWA funds are obligated against this AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT by their duly authorized officers.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

«CityCounty of»

By _____ By _____

Chief, Division of Local Assistance ADMINISTERING AGENCY
Project Implementation Representative Name & Title
(Authorized Governing Body Representative)

Date _____ Date _____

EXHIBIT A

FAIR EMPLOYMENT PRACTICES ADDENDUM

I.

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, religion, ancestry or national origin. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment, without regard to their race, sex, actual or perceived sexual orientation, color, religion, ancestry, or national origin. 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. ADMINISTERING 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. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

3. 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 ADMINISTERING 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 ADMINISTERING 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 this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING 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 ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.

EXHIBIT B

NONDISCRIMINATION ASSURANCES

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

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

1. That ADMINISTERING 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 ADMINISTERING 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:

ADMINISTERING AGENCY hereby notifies all bidders that it will affirmatively ensure 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 ADMINISTERING 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 effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where ADMINISTERING 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 ADMINISTERING 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 ADMINISTERING 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 ADMINISTERING 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 ADMINISTERING 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 of interest therein, or structures, or improvements thereon, in which case the assurance obligates ADMINISTERING 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 ADMINISTERING AGENCY retains ownership or possession of the property.

9. That ADMINISTERING 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 ADMINISTERING 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 ADMINISTERING 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.

THIS ASSURANCE is 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 ADMINISTERING AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on ADMINISTERING AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the Federal-aid Highway Program.

APPENDIX A TO EXHIBIT B

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

(1) **Compliance with Regulations:** ADMINISTERING 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 this agreement.

(2) **Nondiscrimination:** ADMINISTERING AGENCY, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. ADMINISTERING 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 ADMINISTERING 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 ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

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

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

- (a) withholding of payments to ADMINISTERING AGENCY under the Agreement until ADMINISTERING AGENCY complies; and/or
- (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) **Incorporation of Provisions:** ADMINISTERING AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. ADMINISTERING 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 ADMINISTERING AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, ADMINISTERING AGENCY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, ADMINISTERING AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B TO EXHIBIT B

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 ADMINISTERING AGENCY will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of Federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the ADMINISTERING 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 ADMINISTERING 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 ADMINISTERING AGENCY, its successors and assigns.

ADMINISTERING 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 ADMINISTERING 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 EXHIBIT B

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

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, ADMINISTERING 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, ADMINISTERING 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 ADMINISTERING 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 EXHIBIT B

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

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, ADMINISTERING 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, ADMINISTERING 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 ADMINISTERING 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.