



**Eastern Sierra Transit Authority (ESTA)**  
Request for Qualifications for Architectural and Engineering Services for  
The Eastern Sierra Transit Authority  
Transit Operations Facility Project

Due Date: January 11, 30, 2020 at 4:00 pm

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The Eastern Sierra Transit Authority  
Transit Operations Facility Project

## **Objectives and Scope of Services**

The Eastern Sierra Transit Authority (ESTA) is seeking proposals for Architectural and Engineering services for a Transit Operations Facility Project. The project involves the design and engineering of a construction project that includes a 2,500 sq. ft. transit operations building, grading, paved parking lot, utilities, water runoff, septic, maintenance container electricity, and landscaping.

## **Background Information:**

ESTA's operations in the Bishop region are currently based out of ESTA's existing transit facility, which is located at the Eastern Sierra Regional Airport at 703 Airport Road in the Industrial Zone in Bishop (37.221311<sup>o</sup> N, 118.215923<sup>o</sup> W). The planned Transit Operations Facility is located on the southern side of the middle airport access road, east of the current bus parking area. The Transit Operations Facility site consists of approximately 24,120 square feet. The area is currently disturbed undeveloped land and sits adjacent to the bus yard.

ESTA has been approved for FTA 5339 grant funds to design and engineer, as well as construct improvements at the Bishop Transit Operations Facility Project.

## **Scope of Services**

The scope defines ESTA's requirements for delivering services for the final design, architectural and engineering, and construction bid documents of the proposed ESTA Bus Operations Facility and providing the necessary services to bring the project to fruition. The proposed scope itemizes the various tasks and subtasks to develop a level of detail on each task that shall lead to providing a functional facility.

The scope of services comprises two major tasks, discussed on the following pages:

### **Final Plan, Specifications, and Contract Bid Documents**

- Task 1: Final Plan and Specifications
- Task 2: Construction Bid Documents

## **TASK 1: FINAL PLAN and SPECIFICATIONS**

The preliminary draft plans shall be further developed and the Design Team shall identify appropriate design criteria, costs and existing conditions that shall affect the design and construction of the facility. A preliminary drawing for the building has been prepared and is included in Exhibit G. The drawing describes the building floor plan. A site survey will be conducted. The Design Team shall generate final building and site plans identifying the building and site improvement issues. A cost estimate based on the final plan design shall be part of the overall final plan submittal to ESTA.

### 1.1 Conceptual design review

The Design team will review the preliminary drawing prepared by Inyo County staff (Exhibit G). Any adjustments required to the draft plans will be discussed with ESTA staff before integrating into the final plans.

### 1.2 Field Topo/Utility Survey of Selected Site

A surveyor shall be contracted by the Design Team to provide current topographic surveys of the proposed site based on the most current USGS data. Additional survey information that shall be required by the project shall be identified by the Design Team and shall be gathered by whatever additional survey efforts are necessary. Utility locations (*including internet*) are to be identified, as well as any restrictions that may be attached to the proposed site. As part of the overall effort, the Design Team is to study existing site conditions to identify possible site issues that may affect locations of new structures. The Design Team shall verify (or perform) measurements on the survey and provide documentation to the Project Manager. Consideration of future fleet electrification should be taken into consideration, not for this current project planning or implementation, but for future projects. Future fleet electrification will require trenching and access to existing utilities.

### 1.3 Final Plans

The final plans shall provide sufficient detail to be able to show the building in relation to other physical features on the site. The plans shall have sufficient detail to provide information on the recommended location and sizes of:

- offices,
- hallways,
- conference rooms,
- server room(s),
- fare counting room,
- employee break areas,
- restrooms,
- general storage rooms,
- vehicle parking/storage,
- utility areas,
- public access

- dispatch areas,

#### 1.4 Cost Estimates and Milestone Schedule

The Design Team shall provide cost estimates to quantify the future construction costs, and project milestones.

#### 1.5 Final Plan Submittal

The final subtask shall be to prepare the final plan package for ESTA review and approval. Three copies of the final plan and one copy in electronic format shall be delivered to ESTA for distribution. ESTA shall receive a drawing package, and a cost estimate for the facility.

#### 1.6 ESTA Review

ESTA will review the final plan submittal from the Design Team and provide comments for incorporation into the final documents prior to authorizing future tasks.

#### TASK 1 DELIVERABLES:

- Site survey
- Final building and site plans
- Cost Estimate and Milestone Schedule

### **TASK 2: CONSTRUCTION BID DOCUMENTS**

Task 2 shall include the completion of all construction specifications and plan in conformance with the previously approved final plans that shall permit construction contractors to bid competitively.

#### 1.1 Contract Documents

Contract bid documents shall provide complete descriptions of work involving the architectural, civil, structural, mechanical, electrical, special systems, landscaping components and all other drawings noted in the design development task of the proposed improvements. The documents shall describe, locate and dimension, as well as give the physical properties, workmanship requirements, performance characteristics and other pertinent information relating to each component. Any required construction methodology and sequencing as well as special provisions due to phasing requirements shall be described.

The design disciplines are described below:

- Site, civil and utility design: Work under this discipline completes the development of site geometry, the preparation of contract drawings for

access points as they interface within the master plan of the area, site grading, pavement design, utilities, septic tank and leech field, drainage, fencing, maintenance container electricity, and connections to existing utilities. The site drawings shall present placement of curbs, driveways, street improvements, fencing, gates and other security and safety features.

- Landscape design: The materials that shall be selected to landscape the perimeter of the site shall be chosen to ease the visual impact of the hard surfaces of the facility and present a pleasing appearance. Careful consideration to water conservation and natural foliage is expected.
- Electrical engineering: Electrical design work shall include finalization of power, communication, and lighting requirements and design of an efficient electrical distribution system for the new building. A detailed lighting plan shall be provided that depicts lighting type, areas of illumination and light intensity. Also provide a plan for providing electricity to the two maintenance containers.
- Specifications: A set of construction specifications, together with the standard bidding and contract documents, general conditions and special provisions shall be prepared.

### 1.2 Construction Cost Estimates and Schedule

A complete construction estimate shall be prepared and submitted to ESTA for each scheduled submission in conjunction with the writing of the contract specifications. Each cost estimate shall contain an itemized list of materials and methods used on the project, along with the associated unit and installation costs. The estimates shall be based upon standard bid items and formats and shall be used as a standard against which all bids shall be evaluated. A detailed construction schedule, in critical path format, shall be developed and provided to ESTA to assist in controlling the construction schedule and budget.

### 1.3 Permitting and Review

The Design Team shall review the design with ESTA and other agencies having jurisdiction over the necessary permits for the project. The design shall also be reviewed with suppliers of utility services to develop the construction documents and permit requirements. The Design Team consultant shall coordinate and furnish documentation required for approvals, permits, utility service and connections, and the relocation of existing utilities and other facilities. Following receipt of comments from the various reviewing agencies, the Design Team shall make all necessary revisions to the documents to receive permit approvals and acquire the permits before construction begins.

#### 1.4 ESTA Review

ESTA will review the contract bid documents submittal from the Design Team and provide comments for incorporation into the final documents prior to authorizing that the project be let for bidding.

#### TASK 2 DELIVERABLES:

- Drawings
- Specifications
- Cost estimate
- Project schedule

#### **Assumptions:**

This is a simple one-story office building and it is assumed that the cost of designing and engineering the project will not exceed the cost of building it. Here are some additional assumptions:

- A Storm Water Pollution Prevention Program will not be required because the area of impact is under 1 acre
- No utility relocation will be required

#### **Project Timetable:**

December 11, 2020	Issue Request for Qualifications
January 11, 2021, 4:00 pm	Closing Date for Receipt of Proposals
January 15, 2021 [approximate]	Finalists contacted to schedule interviews (if necessary)
January 19, 2021	Conduct interviews (if necessary)
January 22, 2021	Contract Award
February 1, 2021	Design and Engineering Start
June 1, 2021	Design and Engineering End

#### **Selection Process**

The Architectural and Engineering contract will be awarded on a best-value basis to be determined by demonstrated competence and professional qualifications, availability, ability to comply with proposed schedule, and proposal quality. There may be an interview of the top firms. Proposals will be reviewed by select ESTA staff members and authorized County Representatives. If an interview is conducted it will be scheduled within one week following the proposal submittal.

Issuance of this RFQ and receipt of proposals does not commit ESTA to award a Contract. ESTA reserves the right to postpone proposal opening for its own convenience, to accept or reject any or all proposals received in response to this RFQ, to negotiate with other than the selected Consultant(s) should negotiations with the selected Consultant(s) be terminated, to negotiate with more than one Consultant simultaneously, or to cancel all or part of this RFQ.

Consultants will be measured on the following scoring criteria:

Criteria	Max Score
Demonstrated Competence	30
Professional Qualifications	30
Availability	20
Schedule Compliance	20
Proposal Quality	10

### **Proposal Response Format**

The following proposal format is required and has been designed to facilitate comparison among proposals submitted:

#### 1. Cover Letter - Introduction

Provide a summary of your proposal and demonstrate your understanding of the project, including general approach responding to ESTA's requirements. This should also include an introduction to your firm as well as the name of a contact person.

#### 2. Qualifications and Experience

Prepare a summary of your firm's qualification and experience in similar projects. Include the names of clients, duration and description of assignments. Also, include names and telephone numbers of contact persons of at least three (3) clients providing similar services in the last 5 years.

#### 3. Technical Approach and Scope of Work

Provide a detailed work plan of assumptions for the project, including staff classification and estimated hours each will participate. This should include any necessary progress meetings with ESTA staff, specific output to be generated at various steps, and major milestones. **Please provide a scope of work to be included as Exhibit "A" in ESTA's standard contract.**

#### 4. Staffing and Subconsultants

Please list the individuals that will participate on this assignment, including the staff classification. Please include a brief resume of experience in similar projects for each individual and proof of various professional registration, licenses, and certificates.

#### 5. Timing Requirements

ESTA will require the work to be complete by November 30, 2020. The proposer should submit a timeline for completion of the Scope of Services previously mentioned.

#### 6. Fees

**Under separate sealed cover**, provide a fixed price proposal for your proposed services, including a price and hours breakdown for each project milestone. Also provide a listing of staff hourly rates and other costs in the event that extra work is required outside the scope of the project. The hourly rates and costs will be attached as an exhibit to ESTA's contract. The Consultant will be selected without consideration of fees. Once a Consultant is selected, the fees will be reviewed and negotiated as necessary.

### **Submittal of Proposals**

Completed proposals in Adobe pdf format are to be emailed to Phil Moores at pmoores@estransit.com with subject line:

**"RFQ – Transit Operations Facility Project".**

Your proposal must be received prior to 4:00 PM, Monday, January 11, 2021.

If all required information is not provided, a proposal may be considered nonresponsive and rejected without evaluation. Late proposals are considered nonresponsive and shall be rejected.

ESTA shall not, in any event, be liable for any pre-contractual expenses incurred by Consultant in the preparation of its proposal. Consultant shall not include any such expenses as part of its proposal. Pre-contractual expenses are defined as expenses incurred by the Consultant in:

- preparing its proposal in response to this RFQ;
- submitting the proposal to ESTA;
- negotiating with ESTA any matter related to the proposal; or
- any other expenses incurred by the Consultant prior to date of award, if any, of the Contract.

The Consultant's proposal and any contract entered into thereafter become the exclusive property of ESTA and shall be subject to the California Public Records Act (Government Code Section 6250 et seq.). ESTA's use and disclosure of its records are governed by this Act. Those elements in each proposal which Consultant considers to be trade secrets, as that term is defined in Civil Code Section 3426.1(d), or otherwise exempt by law from disclosure, should be prominently marked as "TRADE SECRET", "CONFIDENTIAL", or "PROPRIETARY" by Consultant. ESTA will use its best efforts to inform Consultant of any request for disclosure of any such document. ESTA, shall not in any way, be liable or responsible for the disclosure of any such records including, without limitation; those so marked if disclosure is deemed to be required by law or by an order of the Court.

## **Payment**

Eastern Sierra Transit desires to enter into an agreement with the service provider based upon the pricing described in the proposal. Payment shall be made within thirty (30) days after satisfactory performance of the contractual services, in accordance with all of the provisions.

## **Information and Inquiries**

Should a Consultant require clarifications to this RFQ, the Consultant shall notify ESTA Staff listed below in writing. Should it be found that the point in question is not clearly and fully set forth in the RFQ, ESTA may issue a written addendum clarifying the matter.

Substantive changes to the requirements will be made by written addendum to this RFQ. Any written addenda issued pertaining to this RFQ shall be incorporated into the terms and conditions of any resulting Agreement. A draft agreement, along with Disadvantaged Business Enterprise goal, Exhibit D, and Federal Third Party Clauses, is attached as Exhibit B. ESTA shall not be bound to any modifications to or deviations from the requirements set forth in this RFQ as the result of oral instruction.

## **The following Special Program(s) are applicable to this RFQ:**

Disadvantaged Business Enterprise (DBE) Program

1. This solicitation and resultant Agreement is financed in whole or in part with federal funds and therefore subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." In compliance with 49 CFR 26, Caltrans set an overall annual DBE goal comprising both race neutral and race conscious elements. To ensure equal participation for DBE groups specified in 49 CFR 26.5, Caltrans specifies a contract goal for DBE participation. The required goal for DBE participation in this solicitation is 0.0 percent (0.0%).
2. To ensure applicable participation of the specified DBEs as defined in 49 CFR 26.5, this solicitation's goal applies to all certified DBEs. Only certified DBE participation will count toward the Agreement goal for this solicitation. DBE participation will count towards Caltrans' federally mandated overall annual DBE goal. In order to ascertain whether its overall annual DBE goal is being achieved, Caltrans tracks DBE participation on all federal-aid contracts.
3. It is the Bidder's/Proposer's responsibility to verify that the DBE firm is certified as a DBE by the specified bid submittal due date and time. For a list of DBEs certified by the California United Certification Program (CUCP), go to: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)
4. Proposer shall complete and submit Exhibit D forms, Bidder/Proposer *Disadvantaged Business Enterprise DBE Information ADM-0227F* and/or Bidder/Proposer *Disadvantaged Business Enterprise DBE Good Faith Efforts Documentation ADM-0312* for detailed information and the required forms. Required forms will be made a part of the Agreement. Failure to meet the DBE goal or Good Faith Effort requirements and provide required DBE participation may result a bid/proposal being rejected as non-responsive.
5. The requirement to advertise for the purpose of identifying potential DBEs is waived.

### **Protest Procedures**

See Exhibit F.

For further information, please contact the following ESTA Staff:

Phil Moores  
Executive Director  
(760) 872-1901 ext. 12  
[pmoores@estransit.com](mailto:pmoores@estransit.com)

**Other Requirements:**

By submitting a proposal, Consultant represents that it has thoroughly examined and become familiar with the work required under this RFQ and is capable of performing quality work to achieve ESTA's objectives.

By submitting a proposal, Consultant warrants that any and all licenses and/or certifications required by law, statute, code or ordinance in performing under the scope and specifications of this RFQ are currently held by Consultant, and are valid and in full force and effect.

**EXHIBIT A**  
**Sample Contract**

**EASTERN SIERRA TRANSIT AUTHORITY**  
**DESIGN PROFESSIONAL SERVICE AGREEMENT FOR CONSTRUCTION PROJECTS**

THIS AGREEMENT, is made and effective \_\_\_\_\_, between Eastern Sierra Transit Authority ("Agency"), a Joint Powers Authority Public Transit Agency, and [FIRM], Inc., dba [FIRM], a [state] Corporation. In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**1. TERM**

This Agreement shall commence on [date], and shall remain and continue in effect until tasks described herein are completed, but in no event later than [date], unless sooner terminated pursuant to the provisions of this Agreement.

**2. SERVICES**

Consultant shall perform the tasks described and set forth in Exhibit xx, attached hereto and incorporated herein as though set forth in full.

**3. PERFORMANCE**

Consultant shall at all times competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. Consultant shall perform its services consistent with, but limited to, the ordinarily accepted standards and practices utilized by persons in Consultant's profession engaged in providing similar services practicing in the same or similar locality under similar circumstances in meeting its obligations under this Agreement. Consultant makes no warranties, guarantees, express or implied, under this Agreement or otherwise in connection with the Consultant's services.

**4. AGENCY MANAGEMENT**

Agency's Executive Director shall represent Agency in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to Consultant. Agency's Executive Director shall be authorized to act on Agency's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change Consultant's compensation, subject to Section 5 hereof.

**5. PAYMENT**

(a) The Agency agrees to pay Consultant monthly, in accordance with the terms of this Agreement as set forth in section 5(c). This amount shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_.00) for the total term of the Agreement and tasks of the Agreement set forth in Exhibit xx unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the Agency Executive Director. Consultant shall be compensated for any additional services in the amounts and in

the manner as agreed to by Agency Executive Director and Consultant at the time Agency's written authorization is given to Consultant for the performance of said services. The Agency Executive Director may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall such sum exceed ten-thousand dollars (\$20,000.00). Any additional work in excess of this amount shall be approved by the Governing Board.

(c) Consultant will submit invoices monthly on the first day of each month, beginning on [date], for a fixed monthly fee representing one-fifth of Consultant's total fee under this Agreement. The final one-fifth payment will be withheld once all the terms of this contract are fulfilled. Payment shall be made within twenty (20) days of receipt of each invoice as to all non-disputed fees. If the Agency disputes any of Consultant's fees it shall give written notice to Consultant within ten (10) days of receipt of an invoice of any disputed fees set forth on the invoice.

## **6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

(a) The Agency may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the Agency suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the Agency shall pay to Consultant the proportional value of the work performed up to the time of termination in relation to the Consultant's total fee under this Agreement, less any amounts previously paid under the terms of this Agreement. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the Agency pursuant to Section 5.

## **7. DEFAULT OF CONSULTANT**

(a) The Consultant's failure to comply with the material provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, Agency shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the Agency Executive Director or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the Agency shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

## **8. OWNERSHIP OF DOCUMENTS**

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by Agency that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient

detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of Agency or its designees at reasonable times to such books and records; shall give Agency the right to examine and audit said books and records; shall permit Agency to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) All reports, drawings, specifications, computer files, field data, notes and other documents and instruments of service shall remain the property of the Consultant. The Consultant shall retain all common law, statutory and other reserved rights, including the copyright thereto. Nevertheless, the final construction documents prepared under this Agreement shall become the property of the Agency upon completion of the services and payment in full of all monies due to the Consultant. The Agency shall not reuse such instruments of service for any other project without the prior written consent of Consultant. If the instruments of service are used on any other project or are modified without the prior written consent of Consultant, the Agency shall make agreement of proper compensation to the Consultant as well as defend, indemnify and hold harmless Consultant from all claims and damages arising out of or purported to arise out of such use on the other second project.

(c) If the Consultant is terminated or is not allowed to complete all the services called for by this Agreement, and if the Agency decides to complete the project through the use of another design professional and uses the instruments of service, the Consultant shall not be held responsible for the accuracy, completeness or constructability of the construction documents prepared by Consultant if used, changed or completed by the Agency or by another party.

## **9. INDEMNITY AND DEFENSE**

### **(a) Indemnification for Professional Services**

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Agency and any and all of its officials and employees ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs, but only to the extent actually caused by the negligence, recklessness, or willful misconduct of the Consultant. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by Agency in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant's percentage of fault, the parties agree to mediation with a third party neutral to determine the Consultant's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the Agency.

### **(b) For All Other Liabilities**

Notwithstanding the foregoing and without diminishing any rights of Agency under Section 9.A, for any liability, claim, demand, allegation against Agency arising out of, related to, or pertaining to any negligent act or omission of Consultant, but which is not a design professional service, Consultant shall defend, indemnify, and hold harmless Agency, its officials and employees ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, to the extent,

but only to the extent, that the claims are the result of any negligent acts or omissions by the Consultant under this Agreement, excluding however, personal or bodily injury, property damage, or economic injury arising out of the rendering or failure to render any professional services by the Consultant (which is covered by Section 9.A above).

#### **10. INSURANCE**

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached to and part of this Agreement.

#### **11. INDEPENDENT CONSULTANT**

(a) Consultant is and shall at all times remain as to the Agency a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither Agency nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the Agency. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against Agency, or bind Agency in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, Agency shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for Agency. Agency shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

#### **12. LEGAL RESPONSIBILITIES**

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and endeavor to comply with all such laws and regulations, including, but not limited to, EXHIBIT B, Third party Federal Clauses, and EXHIBIT D, Disadvantaged Business Enterprises attached. The Agency, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

#### **13. UNDUE INFLUENCE**

Consultant declares and represents that no undue influence or pressure is used against or in concert with any officer or employee of the Agency in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the Agency will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

#### **14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of Agency, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement,

or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

**15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without Agency's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the Agency Executive Director or unless requested by the Agency Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the Agency. The foregoing shall not apply, and Consultant shall not be deemed in breach of this provision, however, to the extent that release of such information by Consultant is in keeping with Consultant's performance of services under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives Agency notice of such court order or subpoena.

(b) Consultant shall promptly notify Agency should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder. Agency retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding.

(c) Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder.

**16. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To Agency: Eastern Sierra Transit Authority  
703B Airport Road  
Bishop, CA 93514  
Attention: Phil Moores, Executive Director

To Consultant: [FIRM]

**17. ASSIGNMENT**

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the Agency. Because of the personal nature of the services to be rendered pursuant to this Agreement, only [FIRM] and its sub-contractors shall perform the services described in this Agreement.

[FIRM] may use assistants, under its direct supervision, to perform some of the services under this Agreement. Consultant shall provide Agency fourteen (14) days' notice prior to the departure of a sub-contractor from Consultant's employ. Should he/she leave Consultant's employ, the Agency shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the Governing Board and the Consultant.

## **18. LICENSES**

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

## **19. GOVERNING LAW; DISPUTE RESOLUTION**

The Agency and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the Agency.

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Agency and Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation as a prerequisite to any litigation, unless the parties mutually agree otherwise.

## **20. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

## **21. WORK SCHEDULED/TIME OF COMPLETION**

Agency and Consultant agree that time is of the essence in this Agreement. Agency and Consultant further agree that Consultant's failure to perform on or at the times set forth in this Agreement will damage and injure Agency, but the extent of such damage and injury is difficult or speculative to ascertain. Notwithstanding the foregoing, Agency agrees that the Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond the Consultant's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; pandemics; failure of any government agency to act in timely manner; failure of performance by the Agency or the Agency's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

## **22. LIMITATION OF LIABILITY**

In recognition of the relative risks and benefits of the Project to both the Agency and Consultant relating to Consultant's provision of services in accordance with this Agreement, the risks have been allocated such that the Agency agrees, to the fullest extent permitted by law, to limit the liability of Consultant to the Agency for any and all claims, losses, costs, damages of any nature whatsoever

or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of Consultant to the Agency shall not exceed the sum of Consultant's available insurance coverage at the time of settlement or judgment regardless of theories of liability or causes of action asserted against Consultant except for acts of willful misconduct or unless otherwise prohibited by law.

The Consultant and Agency waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the Termination section of this Agreement.

### **23. COST ESTIMATES**

Agency acknowledges that the review and comments and/or any opinions expressed by Consultant represent Consultant's best judgment as professionals generally familiar with the construction industry. However, Consultant has no control over costs or the price of labor, equipment or materials, or over the contractor's method of pricing. Therefore, Consultant makes no warranty or representation, expressed or implied, as to the accuracy of such comments or opinions as compared to bid or actual costs, and/or that all items are included.

### **24. DESIGN WITHOUT CONSTRUCTION PHASE SERVICES**

It is understood and agreed that the Consultant's Scope of Services under this Agreement does not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided for by the Agency. The Agency assumes all responsibility for interpretation of the Contract Documents and for construction observation and the Agency waives any claims against the Consultant that may be in any way connected thereto.

In addition, the Agency agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the Consultant.

If the Client requests in writing that the Consultant provide any specific construction phase services, and if the Consultant agrees in writing to provide such services, then they shall be compensated for as Additional Services.

### **25. CONTENTS OF REQUEST FOR QUALIFICATIONS AND PROPOSAL**

Consultant is bound by the contents of Agency's Request for Qualifications, issued [date], and the contents of the proposal submitted by the Consultant, dated [date]. In the event of conflict, the requirements of Agency's Request for Qualifications and this Agreement shall take precedence over those contained in the Consultant's proposals.

### **26. AUTHORITY TO EXECUTE THIS AGREEMENT; SOLE CORPORATE REMEDY**

The person or persons executing this Agreement on behalf of Consultant represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

It is intended by the parties to this Agreement that the Consultant's services in connection with the Project shall not subject the Consultant's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Agency agrees that as the Agency's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Consultant and not against any of the Consultant's individual employees, officers or directors.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CONSULTANT:**

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Typed Name)

\_\_\_\_\_

(Title)

**EASTERN SIERRA TRANSIT AUTHORITY:**

\_\_\_\_\_

Phil Moores

Executive Director, Eastern Sierra Transit Authority

**APPROVED AS TO FORM:**

Agency Attorney

By: \_\_\_\_\_

**EXHIBIT B**

Third-Party Federal Clauses

1. Source of Funding:

This contract entered on \_\_\_\_\_ between \_\_\_\_\_  
(DATE) (AWARDING AGENCY)  
and \_\_\_\_\_ for  
(CONTRACTOR)  
Bishop Transit Facility  
(PROJECT)

is being funded with the following fund source(s) and amounts:

<b>FUND SOURCE</b>	<b>AMOUNT</b>
FTA 5339	\$457,000

Parties referenced in the following clauses are defined as:

“Awarding Agency” is the subrecipient of the State of California Department of Transportation.

“PROJECT” is the Awarding Agency’s federally supported project.

“CONTRACTOR” is the third-party vendor who has entered into this third-party contract with the Awarding Agency to provide goods or services directly to the Awarding Agency for the accomplishment of the PROJECT.

“Subagreements” are agreements made between the CONTRACTOR and any subcontractors to facilitate the accomplishment of this third-party contract.

**For All Third-Party Contract Awards Excluding Micro-Purchases, Except Construction Contracts Exceeding \$2,000.00**

**No Obligation to Third-Parties by use of a Disclaimer**

- A. No Federal Government Obligation to Third Parties. The CONTRACTOR agrees that, absent of the Federal Government’s express written consent, the Federal Government shall not be subject to any obligations or liabilities to any contractor, any third-party contractor, or any other person not a party to the Grant Agreement in connection with the performance of the PROJECT. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, or third-party agreement, the Federal Government continues to have no obligation or liabilities to any party, including the CONTRACTOR or third-party contractor.
  
- B. Third-Party Contracts and Subagreements Affected. To the extent applicable, federal requirements extend to third-party contractors and their contracts at every tier, and to the subagreements of third-party contractors and the subagreements at every tier. Accordingly, the CONTRACTOR agrees to include, and to require its third-party contractors to include appropriate clauses in each third-party contract and each

subagreement financed in whole or in part with financial assistance provided by the FTA.

- C. No Relationship between the California Department of Transportation and Third-Party Contractors. Nothing contained in this Contract or otherwise, shall create any contractual relationship, obligation or liability between the California Department of Transportation and any third-party contractors, and no third-party contract shall relieve the CONTRACTOR of his responsibilities and obligations hereunder. The CONTRACTOR agrees to be fully responsible to the Awarding Agency for the acts and omissions of its third-party contractors 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 third-party contractors is an independent obligation from the Awarding Agency's obligation to make payments to the CONTRACTOR. As a result, the California Department of Transportation shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.
- D. Obligations on Behalf of the California Department of Transportation. The CONTRACTOR shall have no authority to contract for or on behalf of, or incur obligations on behalf of the California Department of Transportation.
- E. Awarding Agency Approval of Subagreements. The Awarding Agency shall approve in writing all proposed Subagreements, Memorandums of Understanding (MOU), or similar documents relating to the performance of the Contract prior to implementation. The CONTRACTOR agrees that it will not enter into any Subagreements unless the same are approved in writing by the Awarding Agency. Any proposed amendments or modifications to such Subagreements must be approved by the Awarding Agency prior to implementation.

**Program Fraud and False or Fraudulent Statements or Related Acts**

- A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq. and US Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, and pertaining to the underlying contract or the federally assisted PROJECT for which this contracted work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 in the CONTRACTOR to the extent the Federal Government deems appropriate.
- B. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a PROJECT that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

- C. The CONTRACTOR agrees to include the above two clauses in each subagreement financed in whole or in part with Federal Assistance provided by the California Department of Transportation. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **Access to Records**

The Awarding Agency, the California Department of Transportation, the State Auditor General, and any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONTRACTOR and its subcontractors that are pertinent to this Contract of audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. The CONTRACTOR shall include a clause to this effect in every subagreement entered into relative to the PROJECT.

#### **Record Keeping**

The CONTRACTOR and all subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Contract. All parties shall make such materials available at their respective offices at all reasonable times during the performance and for three (3) years from the date of final payment under this Contract and all subagreements.

#### **Accounting Records**

The CONTRACTOR shall establish and maintain separate accounting records and reporting procedures specified for the fiscal activities of the PROJECT. The CONTRACTOR'S accounting system shall conform to generally accepted accounting principles (GAAP) and uniform standards that may be established by California Department of Transportation. All records shall provide a breakdown of total costs charged to the PROJECT including properly executed payrolls, time records, invoices, and vouchers.

#### **Federal Changes, Amendments to State, and Local Laws, Regulations, and Directives**

The terms of the most recent amendments to any federal, State, or local laws, regulations, FTA directives, and amendments to the grant or cooperative contract that may be subsequently adopted, are applicable to the PROJECT to the maximum extent feasible, unless the California Department of Transportation provides otherwise in writing.

#### **Civil Rights (Title VI, EEO, & ADA)**

During the performance of this Contract, the CONTRACTOR its assignees and successors in interest, agree to comply with all federal statutes and regulations applicable to grantee subrecipients under the Federal Transit Act, including, but not limited to the following:

- A. Race, Color, Creed, National Origin, Sex. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and federal transit law at 49 U.S.C. Section 5332, the CONTRACTOR Agrees to comply with all applicable equal employment opportunity (EEO) requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the PROJECT. The

CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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 from training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation any issue.

- B. Nondiscrimination. The CONTRACTOR, with regard to the work performed by it during the contract term shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. Department of Transportation's Regulations, including employment practices when the Contract covers a program whose goal is employment. Further, in accordance with Section 102 of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation may issue.
- C. Solicitations for Subcontractors Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work performed under a subagreement, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the subcontractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports. The CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Awarding Agency or the California Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish the information, the CONTRACTOR shall certify to the Awarding Agency of the California Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of the Contract, the Awarding Agency shall:

1. Withholding of payment to the CONTRACTOR under the Contract until the CONTRACTOR complies, and/or
2. Cancellation, termination, or suspension of the Contract, in whole or in part.

F. Incorporation of Provisions. The CONTRACTOR shall include the provisions of these paragraphs A through F in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontractor or procurement as the Awarding Agency or the California Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such directions, the CONTRACTOR may request the Awarding Agency to enter into such litigation to protect the interest of the Awarding Agency, and, in addition, the CONTRACTOR may request the California Department of Transportation to enter into such litigation to protect the interests of the California Department of Transportation.

#### **Incorporation of FTA Terms**

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any California Department of Transportation requests which would cause the California Department of Transportation to be in violation of the FTA terms and conditions. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any Awarding Agency requests which would cause the Awarding Agency to be in violation of the FTA terms and conditions.

#### **Energy Conservation**

The CONTRACTOR agrees to comply with the mandatory energy efficiency standards and policies within the applicable California Department of Transportation energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42, U.S.C. Section 6321 et seq.

### **Awards Exceeding \$10,000.00**

#### **Additional Termination Provisions**

A. Termination for Convenience (General Provision). When it is in the Awarding Agency's best interest, the Awarding Agency reserves the right to terminate this Contract, in whole or in part, at any time by providing a TEN (10) DAY WRITTEN NOTICE to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the Awarding Agency. If the CONTRACTOR has any property in its possession belonging to the Awarding

Agency, the CONTRACTOR will account for the same, and dispose of it in the manner the Awarding Agency directs.

- B. Termination for Default (General Provision). If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, the Awarding Agency may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Awarding Agency that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR, the Awarding Agency, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

- C. Mutual Termination. The PROJECT may also be terminated if the Awarding Agency and the CONTRACTOR agree that its continuation would not produce beneficial results commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.

#### **Awards Exceeding \$25,000.00**

##### **Debarment and Suspension**

- A. The CONTRACTOR agrees to comply with the requirements of Executive Order Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. Section 6101 note; and U.S. DEPARTMENT OF TRANSPORTATION regulations on Debarment and Suspension and 49 CFR Part 29.
- B. Unless otherwise permitted by the California Department of Transportation, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-contract of any amount with a party included in the "U.S. General Services Administration's (U.S. GSA) List of Parties Excluded from Federal procurement and Non-procurement Program," implementing Executive Order Nos. 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. The list also include the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12546 and 12689.
- C. Before entering into any subagreements with any subcontractor, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that awarding agency and its "principals," as defined at 49 CFR Part 29.

- D. Before entering into any third-party contract exceeding \$25,000.00, the CONTRACTOR agrees to obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its “principals,” as defined at 49 CFR 29.105(p). The CONTRACTOR also agrees to require each third-party contractor to refrain from awarding any subagreements of any amount, at any tier, to a debarred or suspended subcontractor, and to obtain a similar certification for any third-party subcontractor, at any tier, seeking a contract exceeding \$25,000.00.

#### **Awards Exceeding \$100,000.00**

##### **Provisions for Resolution of Disputes, Breaches, or Other Litigation**

The Awarding Agency and the CONTRACTOR shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the CONTRACTOR shall submit to the Awarding Agency Representative for this Contract or designee a written demand for a decision regarding the disposition of any dispute arising under this Contract. The Awarding Agency Representative shall make a written decision regarding the dispute and will provide it to the CONTRACTOR. The CONTRACTOR shall have the opportunity to challenge in writing within ten (10) working days to the Awarding Agency’s Executive Director or his/her designee. If the CONTRACTOR’S challenge is not made within the ten (10) day period, the Awarding Agency Representative’s decision shall become the final decision of the Awarding Agency. The Awarding Agency and the CONTRACTOR shall submit written, factual information and supporting data in support of their respective positions. The decision of the Awarding Agency shall be final, conclusive, and binding regarding the dispute, unless the CONTRACTOR commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

##### **Lobbying**

- A. The CONTRACTOR agrees that it will not use federal assistance funds to support lobbying. In accordance with 31 U.S.C. and U.S. Department of Transportation Regulations, “New Restrictions on Lobbying.” 49 CFR Part 20, if the bid is for an award for \$100,000.00 or more the Awarding Agency will not make any federal assistance available to the CONTRACTOR until the Awarding Agency has received the CONTRACTOR’S certification that the CONTRACTOR has not and will not use federal appropriated funds to pay any person or organization to influence or attempt 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 the awarding of any federal grant, cooperative agreement, or any other federal award from which funding for the PROJECT is originally derived, consistent with 31 U.S.C. Section 1352, and;
- B. If applicable, 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 office 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 federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with the form instructions.

- C. The CONTRACTOR shall require that the language of the above two clauses be included in the award documents for all sub-awards at all tiers (including subagreements, sub-grants, and contracts under grants, loans, and cooperative agreements) which exceed \$100,000.00 and that all awarding agencies shall certify and disclose accordingly (see certification form in EXHIBIT E).

This Contract is a material representation of facts upon which reliance was placed when the Contract was made or entered into. These provisions are a prerequisite for making or entering into a Contract imposed by Section 1352, Title 31, U.S. Code. Any person who fails to comply with these provisions shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each failure.

#### **Clean Air**

- A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. The CONTRACTOR agrees to report each violation to the Awarding Agency and understands and agrees that the Awarding Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **Clean Water**

- A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The CONTRACTOR agrees to report each violation to the Awarding Agency and understands and agrees that the Awarding Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### **Awards with Transport of Property or Persons**

#### **U.S. Flag Requirements (Cargo Preferences)(Fly America)**

- A. Shipments by Ocean Vessel. For third-party contacts that may involve equipment, materials, or commodities which may be transported by ocean vessels, the CONTRACTOR and subagreements must comply with 46 U.S.C. Section 55303 and 46 CFR Part 381, "Cargo Preferences-U.S. Flag Vessels."
- B. Shipments by Air Carrier. For third-party contracts that may involve shipments of federally assisted property by air carrier, the CONTRACTOR and subagreements must comply with the "Fly America" Act and 49 U.S.C. Section 40118, "Use of United States of America Flag Carriers," and 41 CFR Section 301-10.131 through 301-10.143.

- C. Project Travel. In accordance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1973, as amended, ("Fly America" Act), 49 U.S.C. 40118 and 41 CFR Part 301-10, the CONTRACTOR and all subcontractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation, to the extent such service is available or applicable.

## **Miscellaneous Special Requirements**

### **Intelligent Transportation Systems (ITS) National Architecture**

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation System (ITS) Architecture and Standards as required by 23 U.S.C. Section 517(d), 23 U.S.C. Section 512 note, and 23 CFR Part 655 and 940, and follow the provisions of the FTA Notice, "FTA National ITS Architecture Policy on Transit projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives the FTA may issue at a later date, except to the extent the FTA determines otherwise in writing.

### **Section 504 and Americans with Disabilities Act Program Requirements**

The CONTRACTOR will comply with 49 CFR Parts 27, 37, and 38, implementing and Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, as amended.

### **DBE Contract Assurance**

The CONTRACTOR, or SUBCONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR or SUBCONTRACTOR shall carry out applicable requirement of 49 CFR Part 26 in the award and administration of [Federal] DOT-assisted contracts. Failure by the CONTRACTOR or SUBCONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of the Standard Agreement between the STATE and the Awarding Agency, the termination of this contract by the Awarding Agency, or such other remedy the STATE or Awarding Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the CONTRACTOR from future bidding as non-responsive.

Awarding Agency shall notify the CALTRANS DBELO in the event the Awarding Agency finds the CONTRACTOR or SUBCONTRACTOR is in violation of 49 CFR Part 26 within five (5) business days the finding is made.

### **DBE Participation Goal**

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The contract goal for participation of Disadvantaged Business Enterprises (DBE) for this contract is 0.0%.

Offerors are required to document sufficient DBE participation to meet the contract goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53 (3)(i)(A). Award of this contract is conditioned on submission of the following:

1. If the offer meets the DBE contract goal the offeror must include with the offer a completed ADM-0227F form.
2. If the offer cannot meet the DBE contract goal the offeror must include with the offer a completed ADM-0312F form that documents the offeror's good faith efforts (GFE) and ADM-0227F form. The Awarding Agency must document concurrence with the offeror's GFE and provide a copy of the GFE to Caltrans DRMT Compliance Liaison for additional concurrence prior to contract award.

The CONTRACTOR shall not terminate the DBE subcontractors listed on ADM-0227F without the Awarding Agency's prior written consent and concurrence from the CALTRANS DBELO. The Awarding Agency may provide such written consent only if the CONTRACTOR has good cause to terminate the DBE firm. Before transmitting a request to terminate, the CONTRACTOR shall give notice in writing to the DBE SUBCONTRACTOR of its intent to terminate and the reason for the request. The CONTRACTOR shall give the DBE five (5) days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the CONTRACTOR shall make good faith efforts (GFE) to find another DBE subcontractor to substitute for the original DBE and immediately notify the Awarding Agency in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement.

#### **Continued Compliance**

The Awarding Agency shall monitor the CONTRACTOR'S DBE compliance during the life of this contract and submit to the STATE a completed ADM-3069 form in each their request for reimbursement (RFR) packet.

#### **Prompt Payment and Return of Retainage**

- A. The Awarding Agency shall comply with 49 CFR Part 26.29 and ensure the CONTRACTOR pay its subcontractors performing work satisfactorily completed related to this contract no later than thirty (30) days after the CONTRACTOR's receipt of payment for that work from the Awarding Agency.
- B. Unless the approved project is for Construction, the CONTRACTOR shall not hold retainage (withhold retention) from any subcontractor. The STATE shall not hold retainage (i.e. withhold retention) from any CONTRACTOR.
- C. If a dispute arises regarding Construction projects only, the CONTRACTOR may exercise its rights under California Public Contract Code (PCC) Sections 10262 and 10262.5 or California Business and Professions Code (BPC) Section 7108.5, as applicable.
- D. The CONTRACTOR is required to pay its subcontractors for satisfactory performance of work related to this Agreement no later than 30 days after the CONTRACTOR's receipt of payment for that work from the Awarding Agency. In addition, the CONTRACTOR is required to return any retainage (retention) payment to any subcontractor within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

**Contract Work Hours and Safety Standards Act (Applicable to: Construction contracts and, in very limited circumstances, non-construction projects that employ laborers or mechanics on a public work.)**

- A. The CONTRACTOR agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 33 and also ensure compliance of its subcontractors; if applicable, CONTRACTOR shall comply with DOL regulations "Safety and Health Regulation for Construction" 29 CFR Part 1926.
  
- B. No CONTRACTOR or subcontractor contracting for any part of the work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at the rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek

## **EXHIBIT C**

### **INSURANCE REQUIREMENTS**

Without limiting Consultant's indemnification of Agency, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and, in a form, satisfactory to Agency.

**General liability insurance.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Professional liability (errors & omissions) insurance.** Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

**Workers' compensation insurance.** Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

#### **Other provisions or requirements**

**Proof of insurance.** Consultant shall provide certificates of insurance to Agency as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by Agency's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Agency at all times during the term of this contract. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time. Policies may be redacted to protect confidential information.

**Duration of coverage.** Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, his agents, representatives, employees or subconsultants.

**Primary/noncontributing.** Except as to the professional liability policy, coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by Agency shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Agency before the Agency's own insurance or self-insurance shall be called upon to protect it as a named insured.

**Agency's rights of enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Agency has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Agency will be promptly reimbursed by Consultant or Agency will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Agency may cancel this Agreement.

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Agency's Risk Manager.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against Agency, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

**Enforcement of contract provisions (non estoppel).** Consultant acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Consultant of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

**Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

**Notice of cancellation.** Consultant agrees to oblige its insurance agent or broker and insurers to provide to Agency with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required).

**Additional insured status.** General liability policies shall provide or be endorsed to provide that Agency and its officers, officials, and employees shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies, but shall not apply to any professional liability policies.

**Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Agency and approved of in writing.

**Separation of insureds.** A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass through clause.** Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to Agency for review.

**Agency's right to revise specifications.** The Agency reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the Agency and Consultant may renegotiate Consultant's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by Agency. Agency reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by Agency.

**Timely notice of claims.** Consultant shall give Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

## **EXHIBIT D**

### **NOTICE TO BIDDERS/PROPOSERS DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AND DBE PARTICIPATION GOAL**

The Department of Transportation (Caltrans) has set an overall annual DBE goal comprising of both race neutral and race conscious elements to be in compliance with Title 49, Code of Federal Regulations, Part 26 (49 CFR 26). This regulation requires that all recipients of United States Department of Transportation (USDOT), Federal Transit Administration (FTA) federal-aid shall establish an overall annual Disadvantaged Business Enterprises (DBE) goal. Caltrans is required to report to FTA the DBE participation for all federal-aid contracts each year so that the overall annual DBE goal attainment efforts may be evaluated. Caltrans encourages DBE participation in the performance of agreements financed in whole or in part with federal funds.

Bidders and proposers are advised that Caltrans has established a federally mandated overall annual DBE goal comprising both race neutral and race conscious elements to ensure equal participation of DBE groups specified in 49 CFR 26.5. In compliance with 49 CFR 26, Caltrans set a contract goal for DBEs participating in this solicitation expressed as a percentage of the total dollar value of the resultant agreement.

**The DBE participation goal for this solicitation is 0.0 percent (0.0%).**

To ensure applicable participation of the specified DBEs as defined in 49 CFR 26.5, this solicitation's goal applies to the following certified DBE groups: African Americans, Asian-Pacific Americans, Hispanic Americans, Native Americans, Subcontinent Asian Americans, or Women. Only DBE participation will count toward the contract goal for this solicitation.

The attached Kform15drmt, Disadvantaged Business Enterprise (DBE) Information and Instructions for Bidders must be included with the solicitation. The subsequent forms **must** be submitted with the bid, cost proposal, price and/or rate schedule by the bid due date and time as indicated in the solicitation:

- **ADM-0227f: Disadvantaged Business Enterprise (DBE) Information Participation, and/or**
- **ADM-0312f: Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation**

Failure to complete and submit the required DBE information and forms, will be grounds for finding the bidder/proposer non-responsive and cause for rejection of the bid/proposal (also refer to the solicitation, Special Programs).

**New Requirement effective February 28, 2011:** The bidder/proposer awarded the Agreement shall complete and submit [ADM-3069, Disadvantaged Business Enterprises Utilization Report](#) with each invoice as required in the Proposed form of Agreement's Exhibit D, Budget Detail and Payment Provisions, and Special Terms and Conditions.

Please read this Notice and Attachments very carefully as bidder/proposer is responsible to ensure bid submittal documents are complete and accurate. **AUTHORITY AND BIDDER'S RESPONSIBILITY**

This solicitation is subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) entitled PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS. Bidders/Proposers (bidder) shall be fully informed of the requirements of the regulations and Caltrans' DBE Program developed pursuant to the regulations. It is the policy of the State of California, Department of Transportation (Caltrans), that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26, be encouraged to participate in the performance of Agreements financed in whole or in part with federal funds. The Bidder should ensure that DBE firms have an opportunity to participate in the performance of this solicitation and shall take all necessary and reasonable steps for this assurance. The bidder shall not

discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

**Terms as used in this document:**

- 'Caltrans' means 'State of California, Department of Transportation'
- 'Awarding Agency' means the agency that let the contract and subrecipient of Caltrans
- 'Agreement' also means 'Contract'
- 'Bidder' also means 'proposer' or 'offeror'
- 'Work Codes' indicate the types of work DBE firms are certified to perform

It is the bidder's responsibility to make work available to DBEs and select portions of work, services, or materiel needed from the Scope of Work. The required work, services and/or materiel must be relevant to the DBEs work codes to meet the contract goal for DBE participation in this solicitation or provide information to establish, that prior to bidding, the bidder made an adequate Good Faith Effort (GFE) to meet the goal.

To be eligible for award of the Agreement, the bidder shall demonstrate that the contract goal for DBE participation was met or that, prior to bidding, an adequate GFE to meet the goal was made. Preliminary determination of goal attainment or GFE by the bidder will be by the Awarding Agency. Final determination of goal attainment or GFE by the bidder will be at Caltrans' discretion.

Bidder is cautioned that even though its submittal indicates it will meet the stated DBE goal, its submittal should also include its GFE documentation along with DBE goal information to protect its eligibility for award of the Agreement in the event Awarding Agency, in its review, finds that the goal has not been met.

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**It is the bidder's responsibility to verify DBE certifications.**

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## **SUBMISSION OF DBE INFORMATION AND PARTICIPATION**

In order to be considered a responsible and responsive bidder, the bidder must meet the contract goal and/or make a GFE to meet the contract goal for DBE participation as established for this Agreement (refer to Section III, DBE Certification Requirements, Section 4). Bidder shall submit the attached form(s).

- ADM-0227f, Disadvantaged Business Enterprise (DBE) Information
- ADM-0312f, Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation. Bidder shall provide sufficient documentation to demonstrate adequate GFEs were made. For disqualification examples, refer to the Instructions to Bidder/Proposer on page 1 of the ADM-0312f.

## **DBE CERTIFICATION REQUIREMENTS**

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

1. A DBE must be a small business firm defined pursuant to Section 3 of the Federal Small Business Act **and** certified through the California Unified Certification Program (CUCP). A DBE firm is a DBE certified through CUCP. In accordance with 49 CFR 26, the DBE must be certified by bid opening

date of the Invitation for Bid (IFB), the Request for Proposal (RFP), or the Architectural and Engineering (A&E) Request for Quotations (RFQ), before credit may be considered toward meeting the DBE goal. It is the bidder's (prime contractor's) responsibility to verify that DBEs are certified by accessing the CUCP database.

2. The CUCP database includes DBEs certified from all certifying agencies participating in the CUCP. If 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.
3. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity (OBEO) web site at: <http://www.dot.ca.gov/hq/bep/>.
  - Click on the blue DBE Search Click Here button
  - Click on Click To Access DBE Query Form
  - Searches can be performed by one or more criteria
  - Follow instructions on the screen (read about NAICS definitions below)
  - "Start Search", is located at the bottom of the query form,
  - "Civil Rights Home" (OBEO), "Caltrans Home", and "Instructions/Tutorial" links are located on top of the query page.

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MUST USE EITHER INTERNET EXPLORER 5.5 OR NETSCAPE 7 (OR GREATER) FOR THIS DATABASE.

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### **Resources to Obtain a List of Certified DBEs for Caltrans Solicitations**

Contractors bidding on Caltrans solicitations with a contract goal for DBE participation may contact the DBE supportive services consultant or obtain lists of certified DBEs from the CUCP database referenced above.

### **NAICS Work Codes and Work Descriptions**

The North American Industry Classification System (NAICS) work codes are used to identify the type of work performed by DBEs. You will need to have the NAICS work code numbers before querying. The United States (US) Census Bureau has developed cross-references from Standard Industrial Classification (SIC) codes to the NAICS codes. Please visit the US Census Bureau web site for more information concerning work areas related to NAICS 237310 Highway, Street, and Bridge Construction, at the following location: <http://www.census.gov/epcd/naics02/def/ND237310.HTM>.

### **How to Obtain a Quarterly List of Certified DBEs without Internet Access**

If you do not have Internet access, Caltrans also publishes a quarterly directory of certified DBE firms extracted from the on-line database. A copy of the quarterly directory of certified DBEs may be ordered from the Caltrans' Division of Procurement and Contracts/Materiel and Distribution Branch/Publication Unit by calling (916) 263-0822.

4. In order to be considered a responsible and responsive bidder, the bidder must meet the contract goal and/or make a Good Faith Effort to meet the contract goal for DBE participation established for the Agreement. The bidder can meet this requirement in one of two ways:
  - a. Meet the contract goal and document commitments for participation by DBE firms.
  - b. If the contract goal is not met or is partially met, the bidder must document an adequate GFE.
5. A bidder (**prime contractor**), who is not a certified DBE, will be required to document one or a combination of the following:
  - a. The bidder will meet the contract goal for DBE participation through work performed by DBE subcontractors, suppliers, or trucking companies.
  - b. Prior to bidding, the bidder made an adequate GFE to meet the contract goal for DBE participation.

6. 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.
7. A certified DBE bidder not bidding as a joint venture with a non-DBE, is required to document one or more of the following:
  - a. The DBE bidder will meet the goal by performing work with its own forces.
  - b. The bidder will meet the contract goal for DBE participation through work performed by DBE subcontractors, suppliers, or trucking companies.
  - c. Prior to bidding, the bidder made adequate GFEs to meet the contract goal for DBE participation.
8. A DBE joint venture partner must be responsible for specific Agreement items of work, or portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces.
9. The DBE joint venture partner must share in the capital contributions, control, management, risks and profits of the joint venture. The DBE joint venture must attach and submit the joint venture agreement with the ADM 0227F as instructed on page 2 of the form.
10. A DBE must perform a Commercially Useful Function (CUF), pursuant to 49 CFR 26, i.e., 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 involved. To perform a CUF, the DBE must also be responsible for materiel and supplies to be used on the Agreement for negotiating price, determining quality, and quantity, installing (where applicable), and paying for the material itself.
11. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in its bid/proposal and all DBE subcontractors must be listed in the bid/cost proposal list of subcontractors.
12. Any dollar amount of work, service or supplies proposed for DBE participation can be counted only once. That is, any further subcontracting or spending for DBE work, service or supplies already credited once for DBE participation cannot be counted again.
13. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the goal except that portion of the work to be performed by non-DBE subcontractors.
14. If the bidder performs and documents an adequate GFE to meet the goal, the award cannot be denied on the basis that the bidder failed to meet the goal.

## **CREDIT: MATERIEL – SUPPLIES – TRUCKING COMPANIES**

### **A. CREDIT FOR MATERIEL OR SUPPLIES PURCHASED FROM DBEs WILL BE AS FOLLOWS:**

1. If the materiel or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materiel or supplies will count toward the DBE goal.
2. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materiel, supplies, articles, or equipment required under the Agreement and of the general character described by the Agreement.
3. If the materiel or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materiel or supplies will count toward the DBE goal.
4. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse or other establishment in which the materiel, 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.
5. 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 as provided in this paragraph if the person both owns and operates distribution equipment for the products.

6. Any supplementing of regular dealers' own distribution equipment shall be a long-term lease Agreement and not on an ad-hoc or Agreement by Agreement basis.

7. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.

8. Credit for materiel 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 commission charged for assistance in the procurement of the materiel and supplies or fees or transportation charges for the delivery of materiel or supplies required on a job site, provided the fees are reasonable and not excessive as compared with similar fees charged for services. The cost of materiel or supplies is not counted toward the DBE goal in this instance.

#### **B. CREDIT FOR DBE TRUCKING COMPANIES WILL BE AS FOLLOWS:**

1. The DBE must manage and supervise the entire trucking operation for which it is responsible on a particular Agreement and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.

2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.

3. The DBE will receive 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.

4. 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.

5. 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 a DBE.

6. A lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from being used by 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.

7. Leased trucks must display the name and identification number of the DBE.

#### **USE AND/OR TERMINATION OF PROPOSED DBEs**

If awarded the Agreement, the successful bidder must use the DBE subcontractor(s) and or supplier(s) proposed in its bid/proposal.

The Contractor may not substitute, add or terminate a subcontractor, supplier or, if applicable, a trucking company, listed in the original bid/proposal without the prior written approval by the Awarding Agency Contract Manager and concurred by Caltrans and only as allowable as specified in the Agreement. This includes work that a prime contractor can perform with its own forces, or with a non-DBE firm, or another DBE firm.

Prior to the termination request, the prime contractor **must** notify the DBE, in writing, of the intent to terminate allowing for five days of response time in opposition of the rejection.

The prime contractor must have good cause in which to terminate the DBE firm. A good cause includes:

1. The DBE fails or refused to execute a written contract.
2. The DBE fails or refuses to perform the work consistent with normal industry standards.
3. The DBE fails or refuses to meet the prime contractor's nondiscriminatory bond requirements.
4. The DBE becomes bankrupt or has credit unworthiness.
5. The DBE is ineligible to work because of suspension and debarment.
6. It has been determined that the DBE is not a responsible contractor.
7. The DBE voluntarily withdraws, with written notification, from the contract.
8. The DBE is ineligible to receive credit for the type of work required.
9. The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.
10. Or other documented compelling reason.

The Contractor must make an adequate GFE to find another certified DBE subcontractor to substitute for the original DBE. The GFE shall be directed at finding another DBE to perform at least the same amount of work under the Agreement as the DBE that was substituted or terminated to the extent needed to meet the established contract goal for DBE participation.

The requirement that DBEs must be certified by the bid opening date does not apply to DBE substitutions after award of the Agreement. Substitutions of DBEs after award must be certified at the time of the substitution or addition.

## **AWARD**

Award of the Agreement will be in accordance with the respective solicitation.

The bidder awarded the Agreement shall be responsible for implementing the applicable requirements of 49 CFR 26 in performance of the Agreement.

The bidder awarded the Agreement shall complete and submit ADM-3069, Disadvantaged Business Enterprises Utilization Report with each invoice.

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION**

**PART A – CONTRACTORS INFORMATION (Refer to Instructions on Page 2 of this form. Bidder/Proposer shall ensure all information provided is complete and**

CONTRACTOR'S BUSINESS NAME		AGREEMENT NUMBER	CONTRACT DOLLAR AMOUNT	DATE
CONTRACTOR'S BUSINESS ADDRESS		CITY	STATE	ZIP CODE
CONTACT PERSON	BUSINESS PHONE	FAX NUMBER	EMAIL ADDRESS	

**PART B – DBE INFORMATION AND DOCUMENTATION (Refer to Instructions in Page 2 of this form. Bidder/Proposer shall verify DBE certifications.) Contractor shall attach a copy of the bid (or price quote) from the DBE (on the DBE's Letterhead) for all DBEs listed below.**

(1) Prime and Subcontractors: List Name(s) and addresses of all DBEs that will participate in this Agreement:	(2) Area Code & Phone Number	(3) Tier	(4) Description of Work, Service, or Materiel Supplied	(5) DBE or CUCP Certification Number.	(6) Ownership Code	(7) DBE \$ Amount Claimed	(8) % of \$ Value Claimed	(9) Caltrans Use Only %

**PART C – FOR CALTRANS USE ONLY (Verification Completed by Civil Rights, Office of Business and Economic Opportunity):**

PRINT VERIFIER'S NAME AND TITLE	SIGNATURE	DATE	CIVIL RIGHTS STAMP OF APPROVED
DBE PARTICIPATION <input type="checkbox"/> YES (    %) <input type="checkbox"/> NO			

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION**

ADM-0227f (Rev. 06/2012) Page 2 of 2

AUTHORITY: Title 49, Code of Federal Regulations, Part 26 (49 CFR 26)

INSTRUCTIONS FOR COMPLETING FORM ADM-0227f (Please Type or Print Legibly):

**PART A – CONTRACTOR INFORMATION**

**CONTRACTOR'S BUSINESS INFORMATION:** Bidder's/Proposer's Business Name, Address, City, State, Zip Code, Contact Person, Business Phone, Fax Number, and Email Address.

**Agreement Number:** The Agreement number is the same number as the Invitation for Bid (IFB) or Request for Proposal (RFP) number.

**CONTRACT DOLLAR AMOUNT:** Total dollar amount that Contractor proposes to accomplish the Agreement.

**Date:** Date this form is completed.

**PART B – DBE INFORMATION AND DOCUMENTS**

**PRIME:** Complete if Prime is a certified DBE.

**Sub-Contractor:** Complete if the Subcontractor(s)/Supplier(s) are certified DBE. Please make and attach additional copies of page 1 if needed. Attach a copy of the bid (or price quote) from the DBE (on the DBE's Letterhead) for all DBEs listed.

**Column 1:** Enter the names (includes all certified DBE Prime and Subcontractors) and complete addresses of all certified DBE Contractor/Subcontractor/Supplier(s) that will be used in the Agreement.

**Column 2:** Enter the area code and phone number of the corresponding certified DBE listed in Column 1.

**Column 3:** Enter the Contracting Tier number for each DBE correspondingly listed in Column 1: 0 = Prime or Joint Consultant, 1 = Primary Subcontractor, 2 = Subcontractor/Supplier of level 1 Primary Subcontractor.

**Column 4:** Enter a description that briefly captures the work to be performed or supplies to be provided by each corresponding DBE firm listed in Column 1.

**Column 5:** Enter the DBE or CUCP Certification Number for the corresponding DBE listed in Column 1. Self-certification is NOT acceptable. DBEs must be certified by the submittal date identified in the IFB or RFP. For more certification and verification information, refer to the IFB's or RFP's Notice to Bidders/Proposers Disadvantaged Business Enterprise (DBE) Program and Participation Goal.

**Column 6:** Enter the correct Ownership Code number below for the corresponding DBE listed in Column B.

- |                       |                                 |                    |
|-----------------------|---------------------------------|--------------------|
| 1 = Black American    | 4 = Asian-Pacific American      | 7 = Woman          |
| 2 = Hispanic American | 5 = Subcontinent Asian American | 8 = Other          |
| 3 = Native American   | 6 = Caucasian                   | 9 = Not Applicable |

**Column 7-8:** Enter the dollar and/or percentage (%) of the dollar (\$) value claimed for each corresponding DBE listed in Column 1.

EXAMPLE:

**PART B – DBE INFORMATION AND DOCUMENTATION (Refer to Instructions in Page 2 of this form. Bidder/Proposer shall verify DBE certifications.)**

(1) List Name(s) and addresses of all DBEs that will participate in this Agreement	(2) Area Code & Phone Number	(3) Tier	(4) Description of Work, Services, or Material Supplied	(5) DBE or CUCP Certification Number	(6) Ownership Code	(7) DBE \$ Amount Claimed	(8) % of \$ Value Claimed	(9) Caltrans Use Only %
B Jane Prime Inc., 1234 Jane's Street, Jane's City, CA	(XXX) 000-1111	0	Project management	XXXXXXXXX	7, 5	48,000	48%	
2B Joe Subcontractor Inc., 4567 Joe's Street, Joe's City	(XXX) 111-0000	1	Design, surveys, environmental testing	0000000000000	6	42,000	42%	
Supplier International LLC, 1100 X Street, Supplier's City, CA, 45670	(111) XXX-0001	2	Survey instruments, testing materials	11111111111111	3	10,000	10%	

**ADDITIONAL INFORMATION:**

- Form ADM-0312f should be submitted with the ADM-0227f to demonstrate good faith efforts (GFE) AND protect bidder's/proposer's eligibility for contract award in the event Caltrans determines the bidder/proposer failed to meet the DBE goal.
- A DBE joint venture partner shall submit the joint venture agreement with the form ADM-0227f.

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

**BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION**

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CONTRACTOR'S NAME	IFB OR RFP OR RFQ NUMBER	DATE
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**BIDDER/PROPOSER INSTRUCTIONS:** Submittal of only the Disadvantaged Business Enterprise (DBE) Information/Participation form, ADM-0227f, may not provide sufficient documentation to demonstrate that adequate good faith efforts (GFE) were made by the bidder/proposer. Bidder/proposers prosing goal attainment should always submit documentation for making GFE to protect its eligibility for award should Caltrans, in its evaluation, find that the goal was not met. Examples of disqualification may include but are not be limited to: 1) A DBE subcontractor was not certified by Caltrans or a state or local participating agency that has a reciprocal agreement with Caltrans, by the bid/proposal due date and time; or 2) Bidder/proposer made a mathematical error resulting in failure to meet the goal. Bidder/Proposer must make an adequate GFE to be responsive. When applying for a determination of a GFE when no contract goals have been attained or when only partial goal(s) have been attained, bidders/proposers shall complete this Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation form, ADM-0312f, and submit the requested information below with its bid by the bid due date and time.

**Bidder/Proposer is responsible to: (1) ensure information is complete and accurate, and (2) verify DBE certifications.**

**1. ADVERTISEMENT DOCUMENTATION**

List names and dates of each general circulation newspaper, trade paper and minority focused paper or other publication in which a request for DBE participation was placed. Attach a copy of the advertisement or proof of publication.

TITLE OF PUBLICATION	PUBLICATION DATE(S)	TITLE OF PUBLICATION	PUBLICATION DATE(S)

**2. DBE DOCUMENTATION**

- a. List the names and dates of written notices sent to certified DBE firms soliciting bids for the contract.
- b. List the dates and methods used for following up initial solicitations to determine with certainty whether or not the DBEs were interested.
- c. Attach a copy of any solicitation package, phone records, fax confirmations or solicitation follow-up correspondence sent to DBE firms.
- d. Identify information submitted to the bidder for this solicitation:

Check the appropriate box:                     IFB                     RFP                     RFQ

**SOLICITATION**

DATE MAILED	DATE PHONED	DATE OF FOLLOW-UP	FOLLOW-UP METHOD PHONE/EMAIL	NAME OF FIRM SOLICITED	CONTACT NAME	PHONE NUMBER

**BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION**

CONTRACTOR'S NAME	IFB OR RFP OR RFQ NUMBER	DATE
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**2. DBE DOCUMENTATION (Continued)**

**SOLICITATION**

DATE MAILED	DATE PHONED	DATE OF FOLLOW-UP	FOLLOW-UP METHOD PHONE/EMAIL	NAME OF FIRM SOLICITED	CONTACT NAME	PHONE NUMBER

**3. ITEMS OF WORK**

Identify the items of work made available to DBE firms, including, where appropriate, any breakdown of the contract work into economically feasible units to facilitate DBE participation. Bidder/Proposer shall demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

ITEMS OF WORK:

BREAKDOWN OF ITEMS:

**BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION**

CONTRACTOR'S NAME	IFB OR RFP OR RFQ NUMBER	DATE
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**4. DBE RESPONSES**

List the DBE firms that responded or submitted bids/proposals to your solicitation for participation in this contract that were not accepted. Provide a summary of your discussion and/or negotiations with each, the name of the firm selected for that portion of work, and the reasons for your choice. Attach copies of quotes from DBE firms contacted

DBE FIRM NAME	PHONE NUMBER	RESPONDED		SELECTED		GIVE REASON FOR NON-SELECTION AND A SUMMARY OF DISCUSSIONS
		YES	NO	YES	NO	

**5. ASSISTANCE TO DBEs – Bonding, Insurance, etc.**

Identify efforts to assist DBEs in obtaining bonding, lines of credit, insurance, and/or any technical assistance related to requirements for the work or for plans and specification provided to DBEs.

**BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION**

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CONTRACTOR'S NAME	IFB OR RFP OR RFQ NUMBER	DATE
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**6. ASSISTANCE TO DBEs – Equipment/Materials, etc.**

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

**7. ADDITIONAL DATA**

Provide any additional data to support a demonstration of GFE such as contacts with DBE assistance agencies. Identify the names of agencies, organizations, and groups providing assistance in contacting, recruiting, and using DBE firms. Attach copies of requests to agencies and any responses received, i.e., lists, Internet pages, etc.

NAME OF AGENCY/ORGANIZATION	METHODS/DATE OF CONTACT	RESULTS

**ADA Notice** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 9581

**EXHIBIT E**

49 CFR PART 20—CERTIFICATION REGARDING LOBBYING

**Certification for Contracts, Grants, and Cooperative Agreements**

*(To be submitted with each bid/proposal exceeding \$100,000.00)*

**The undersigned (BIDDER/PROPOSER) certifies, to the best of his or her knowledge and belief, that:**

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds, other than Federal appropriated funds, have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any TA, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions and as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

The BIDDER/PROPOSER, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. A 3801, et. seq. apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Authorized Official

\_\_\_\_\_ Name and Title of Authorized Official

\_\_\_\_\_ Date

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See Reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> _____ year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:		<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>
<b>6. Federal Department/Agency:</b> Congressional District, if known:	<b>7. Federal Program Name/Description:</b> Congressional District, if known:	
<b>8. Federal Action Number, If known:</b>	CFDA Number, if applicable:	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(If individual, last name, first name, MI):</i>	<b>9. Award Amount, If known:</b> \$ _____ <b>b. Individuals Performing Services</b> <i>(Including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection.	_____ _____ Signature: _____ Print Name: _____ Title: _____	
Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		Telephone No.: _____ Date: _____

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred, Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward receipt. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number

assigned by the Federal agency). Include prefixes, e.g. "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in Item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).

11. Certifying official shall sign and date the form, print his/her name, title and telephone number.

*According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.*

**EXHIBIT F**  
**Protest Procedures**  
**and**  
**Appeal (of Subrecipient's decision) to Caltrans**

**Pre-Award Protests.** Direct protests concerning ESTA's pre-award process in writing (via mail or fax only) to Phil Moores, 703B Airport Road, Bishop, CA 93514, fax: (760) 784-9566, by 4:00 pm, January 11, 2021. Phil Moores will respond to these protests by January 15, 2021, by express mail, email and/or fax.

**Post-Award Protests.** Direct protests concerning ESTA's post-award process in writing (via mail or fax only) to Phil Moores, 703B Airport Road, Bishop, CA 93514, fax: (760) 784-9566, by 4:00 pm, January 15, 2021. Phil Moores will respond to these protests by January 20, 2021, by express mail, email and/or fax.

**Appeal (of Subrecipient's decision) to Caltrans.** Under limited circumstances, after an interested party has exhausted its administrative remedies at ESTA's level, the interested party may appeal ESTA's decision to the California Department of Transportation (Caltrans). The deadline for pre-award protest appeals to Caltrans is 4:00 pm, January 15, 2021. The deadline for post-award protest appeals to Caltrans is 4:00 pm, January 25, 2021

Caltrans limits review of appeals to:

- (1) ESTA's procedural failures (Subrecipient does not have protest procedures, or has not complied with its protest procedures, or has not reviewed the protest when presented an opportunity to do so.)
- (2) Violations of Federal law or regulations
- (3) Violations of State or local law or regulations

Appeals to Caltrans must:

- (1) State the name and address of the interested party.
- (2) Identify Subrecipient responsible for the RFP process.
- (3) State the grounds for appeal, with supporting documentation.
- (4) Include a copy of the protest filed with Subrecipient and a copy of Subrecipient's decision.

(5) State the relief sought from Caltrans.

Direct appeals (via mail or fax only) to:

California Department of Transportation  
Division of Rail & Mass Transportation, MS 39  
PO Box 942874  
Sacramento, CA 94274-0001

Send a copy (via mail or fax only) of the appeal to ESTA.

**Appeal of Caltrans's determination to the Federal Transit Administration**

Appeals to the FTA All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee (Caltrans) before pursuing a protest appeal with FTA.

Reviews of protests by FTA will be limited to:

- (1) a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
- (2) violations of Federal law or regulation.

An appeal to FTA must be received by the cognizant FTA region IX or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.

**EXHIBIT G**  
Preliminary Drawing

