



METROPOLITAN  
TRANSPORTATION  
COMMISSION

Bay Area Metro Center  
375 Beale Street, Suite 800  
San Francisco, CA 94105  
415.778.6700  
www.mtc.ca.gov

July 24, 2018

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Deputy Executive Director, Operations

*Brad Paul*  
Deputy Executive Director,  
Local Government Services

Leland Wilcox  
Chief of Staff, City Manager's Office  
City of San Jose  
200 East Santa Clara St.  
San Jose, CA 95113

RE: Funding Agreement for Innovative Deployments to Enhance Arterials (IDEA) Category 1 Project

Dear Mr. Wilcox:

This letter, effective as of June 24, 2018 ("Effective Date"), is the Funding Agreement (the "AGREEMENT") between City of San Jose ("RECIPIENT") and the Metropolitan Transportation Commission ("MTC") to reimburse the RECIPIENT for services performed to deliver the Innovative Deployments to Enhance Arterials (IDEA) Category 1 project (the "PROJECT"), as described in Attachment A.

It is agreed that MTC and RECIPIENT shall lead the procurement of all necessary equipment, systems, and/or services required to successfully deploy all elements of the PROJECT, as described in Attachment A, Scope of Work, attached hereto and incorporated by this reference and in RECIPIENT's project application, dated September 29, 2017, also incorporated herein by this reference.

Linda Lee (herein "MTC Project Manager") shall be responsible for the overall administration of the AGREEMENT, including approving invoices and progress reports.

MTC will reimburse RECIPIENT for its actual costs incurred for RECIPIENT-led work described in Attachment A, Scope of Work. Compensation to RECIPIENT shall not exceed one million three hundred forty two thousand, six hundred eighty eight dollars (\$1,342,688) without an amendment to this AGREEMENT. Reimbursement costs shall be based on the actual contract bid price for third-party goods and services or based on actual agency staff time spent on the PROJECT. MTC and RECIPIENT jointly agree to exert their best efforts to manage the PROJECT in such a way that costs do not exceed the estimated budget in Attachment B, Project Budget. Should the Project costs exceed the limit set forth in Attachment B due to scope changes not initiated or approved by MTC, RECIPIENT shall be solely responsible for the excess amount. Should Project costs exceed the limit set forth in Attachment B due to scope changes initiated or approved by MTC, Attachment B will be amended to reflect the scope change, and MTC will be responsible for payment of the excess amount to RECIPIENT.

RECIPIENT shall provide the following information in its reimbursement request to MTC:

- a. Total costs expended for the PROJECT during the reporting period
- b. Dollar amount requested for reimbursement
- c. Total costs expended for Project activities to-date
- d. Total amount paid by MTC under this Agreement to-date
- e. Total amount of local cash match expended for project activities to-date
- f. Total amount of in-kind match expended for project activities to-date

The AGREEMENT is funded in whole, or in part, by Congestion Mitigation/Air Quality (CMAQ) Funds allocated to MTC by the Federal Highway Administration (FHWA), funds from which have been awarded to RECIPIENT by MTC.

RECIPIENT shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of any such government, including but not limited to MTC that relate to or in any manner affect the performance of the AGREEMENT. Those laws, statutes, ordinances, rules, regulations and procedural requirements that are imposed on MTC as a recipient of federal or state funds are hereby in turn imposed on RECIPIENT. The Provisions in Attachment C, Terms and Conditions, Attachment D, Fair Employment Practices Addendum, Attachment E, Non-discrimination Assurances, and Attachment F, State Department of Transportation Requirements, are attached hereto and incorporated by this reference. To the extent that they conflict with any of the provisions of this AGREEMENT, they superseded such provisions.

RECIPIENT agrees to provide MTC with documentation establishing compliance with the material terms of this AGREEMENT. RECIPIENT agrees to submit invoices to MTC. RECIPIENT shall only be permitted to invoice or receive reimbursement for actual Project costs incurred, based on the actual contract bid price. The invoice for these payments shall be supported by the required supporting reporting data as indicated in this AGREEMENT. RECIPIENT shall provide a brief progress report with each invoice. MTC reserves the right to request further information to the extent necessary or required to obtain reimbursement from Caltrans.

Payment shall be made within ninety (90) days after receipt by MTC of an acceptable invoice, which shall be subject to the review and approval of MTC's Project Manager. RECIPIENT shall deliver, mail or email invoices to MTC, as follows:

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

If RECIPIENT elects to email rather than mail invoices, the delivery address is [acctpay@bayareametro.gov](mailto:acctpay@bayareametro.gov).

RECIPIENT's Project Manager shall be Ho Nguyen. MTC Project Manager and RECIPIENT's Project Manager will be responsible for all day-to-day communications between the Parties at

any time. Either Party may designate another individual to serve as Project Manager, and shall give the other Party due notice.

All notices and communications regarding interpretation of the terms of this AGREEMENT and changes thereto shall be given to the other Party in writing and shall be deemed given when made in writing, and hand-delivered, mailed, or emailed, to such party at their respective addresses as follows:

If to RECIPIENT:                      Ho Nguyen  
Sr. Transportation Specialist  
City of San Jose  
200 East Santa Clara St.  
San Jose, CA 95113  
Email: ho.nguyen@sanjoseca.gov

If to MTC:                                Attention: Linda Lee  
Metropolitan Transportation Commission  
Bay Area Metro Center  
375 Beale Street, Suite 800  
San Francisco, CA 94105  
Email: rrich@bayareametro.gov

Recipient agrees to retain all documents, working papers, records, accounts and other materials relating to its performance under this AGREEMENT for four years following the fiscal year of the last expenditure under this AGREEMENT, and MTC may inspect and audit such records during that period of time.

Performance will begin on or after the effective date of the agreement and be completed three years thereafter, unless this AGREEMENT is terminated or extended by either RECIPIENT or MTC as provided below. RECIPIENT and MTC may by mutual written agreement extend the term of or make other changes to this AGREEMENT.

This AGREEMENT constitutes the entire agreement between the parties and supersedes any prior written or oral communication. Any amendment of the AGREEMENT must be in writing, specifically identified as an amendment to the AGREEMENT, and signed by both the Chief of Staff of RECIPIENT and the Executive Director of MTC, or their designated representatives.

If you agree, please sign and date both copies of this letter in the space provided below and return to us. The other copy is for your files.

Very truly yours,

DocuSigned by:  
**Steve Heminger**  
021DA2847D43405...  
Steve Heminger  
Executive Director

Accepted and Agreed to this \_\_\_\_\_ day  
of \_\_\_\_\_, 2018.

APPROVED AS TO FORM

By: \_\_\_\_\_  
JON CALEGARI  
Deputy City Attorney

\_\_\_\_\_  
Leland Wilcox, Chief of Staff  
Office of the City Manager

SH:ll

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Attachment A: Scope of Work  
Attachment B: Project Budget  
Attachment C: Terms and Conditions  
Attachment C-1: Additional Federal Clauses  
Attachment D: Federal Employment Practices Addendum  
Attachment E: Nondiscrimination Assurances  
Attachment F: State Department of Transportation Requirements

**ATTACHMENT A**  
**SCOPE OF WORK**

RECIPIENT received a grant under MTC's Innovative Deployments to Enhance Arterials (IDEA) Program – an initiative that is designed to support cities, counties and transit agencies in the implementation of either mature, commercially-available technologies (Category 1) or new, higher-risk connected and automated vehicle technologies (Category 2). The IDEA Program aims to:

1. Improve travel time and travel time reliability along arterials for autos and transit vehicles;
2. Improve safety of motorists, transit riders, bicyclists, and pedestrians;
3. Decreasing motor vehicle emissions and fuel consumption; and
4. Improve knowledge of and proficiency in the use of advanced technologies for arterial operations.

Specifically, RECIPIENT received a grant for a Category 1 project (Figure 1) to deploy Automated Traffic Signal Performance Measures (ATSPM) along various corridors throughout the City to improve arterial operations.

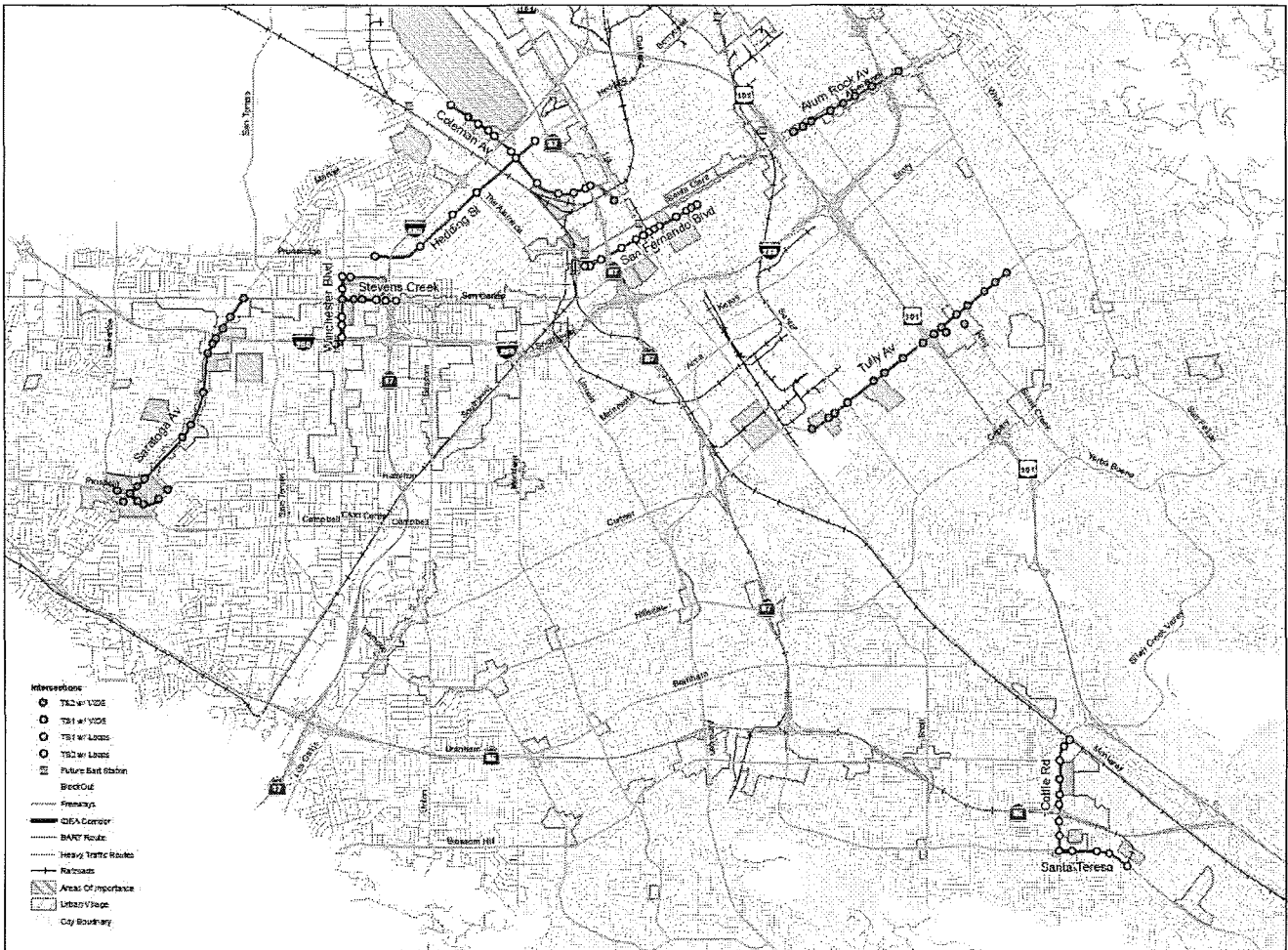
Where appropriate and applicable, RECIPIENT shall lead the procurement to engage vendor(s), contractor(s), and/or consultant(s) to perform the work necessary to successfully complete the project. Such procurements could include, but are not be limited to, the following:

- Capital (e.g., systems, software/hardware/firmware, equipment, etc.)
- Design services
- System integration services
- Project construction services
- Construction management/support services

Some of the procurements for technical assistance services could be led and managed by MTC. During the course of the project, MTC Project Manager and RECIPIENT Project Manager shall work collectively to determine which agency will lead which procurement, based on what would be the most efficient and expeditious approach to meeting the project delivery schedule.

RECIPIENT shall participate in regularly-scheduled calls to ensure project delivery goals are met. RECIPIENT shall provide an appropriate level of staff support and administration required for the successful completion of the project. RECIPIENT shall agree to share data collected as part of the project, if requested by MTC. MTC and RECIPIENT shall mutually agree upon what specific data can be shared.

### Figure 1 Project Area



### **ATTACHMENT B** **PROJECT BUDGET**

The following table provides the total estimated project budget, broken down by MTC's share and RECIPIENT's share (cash and in-kind match) of the total project cost. Under a separate funding agreement and upon receipt of invoices from MTC, RECIPIENT shall forward to MTC the agreed-upon amount of \$25,096 to cover RECIPIENT's cash match for MTC-led work. RECIPIENT shall also commit \$268,537 in cash match for any services it leads to deliver the PROJECT.

	<b>MTC-led Work</b>	<b>RECIPIENT-led Work</b>	<b>Total Project Cost</b>
MTC Share	\$57,210	\$1,342,688	\$1,399,898
RECIPIENT Share (cash match)	\$25,096	\$268,537	\$293,633
<b>SUBTOTAL</b>	<b>\$82,306</b>	<b>\$1,611,225</b>	<b>\$1,693,531</b>
RECIPIENT Share (in-kind match)	n/a	\$179,025	\$179,025
<b>TOTAL</b>	<b>\$82,306</b>	<b>\$1,790,250</b>	<b>\$1,872,556</b>

## **ATTACHMENT C**

### **TERMS AND CONDITIONS**

#### **1. AMENDMENTS**

Any changes in the activities to be performed under this Agreement shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the MTC Executive Director or a designated representative and Recipient. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed amendment.

#### **2. TERMINATION**

MTC may terminate this Agreement without cause upon ten (10) days prior written notice. If MTC terminates this Agreement without cause, Recipient will be entitled to payment for costs incurred for incomplete deliverables, up to the maximum amount payable for each deliverable. If Recipient fails to perform as specified in this Agreement, MTC may terminate this Agreement for cause by written notice and Recipient will be entitled only to costs incurred for work product acceptable to MTC, not to exceed the maximum amount payable under this Agreement for such work product.

#### **3. RETENTION OF RECORDS**

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

#### **4. AUDITS**

Recipient agrees to grant MTC, or any agency that provides MTC with funds for the Project, including but not limited to, the U.S. Department of Transportation, FHWA, the Comptroller General of the United States, the State, and their authorized representatives access to Recipient's books and records for the purpose of verifying that funds are properly accounted for and proceeds are expended in accordance with the terms of this Agreement. All documents shall be available for inspection during normal business hours at any time while the Project is underway and for the retention period specified in Article 3.

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

#### **5. LICENSE TO WORK PRODUCTS**

Recipient hereby grants to MTC an irrevocable, non-exclusive, royalty-free license to use without restriction and share with any person or entity all drawings, designs, specifications, manuals, reports, studies, surveys, models, and source code documentation, documentation or



system architecture, and any other documents, materials, data, and products (“Work Products”) developed, prepared, or assembled by Recipient or Recipient’s consultant(s) or its subconsultants pursuant to this Agreement. MTC may exercise their licenses to Work Products through sublicenses to a third party, without the approval of Recipient or Recipient’s consultant(s) or subconsultants. FHWA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) the copyright in any work developed under this Agreement; and (b) any rights of copyright to which Recipient or Recipient’s consultant(s) or subconsultants purchase ownership under this Agreement.

6. EQUAL EMPLOYMENT OPPORTUNITY

Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) requirements of Title VI of the Civil Rights Act, as amended (42 U.S.C. Section 2000d); Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000e); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. Section 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132); and 49 U.S.C. 5332 and any implementing requirements FHWA may issue. Recipient agrees, and assures that any third party contractor or subrecipient at any tier of this Project will agree, that it will not, on the grounds of race, religious creed, color, national origin, age, physical disability or sex, discriminate or permit discrimination against any employee or applicant for employment.

7. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

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

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

8. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with all the requirements imposed by Title VI of the Civil Rights Act of 1964, as amended, (47 U.S.C. § 2000d *et seq.*) and the regulations of the Department of Transportation issued thereunder, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” (49 CFR Part 21).

9. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

Recipient agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.*; Section 504 of the Rehabilitation Act of

1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. § 5310(f); and their implementing regulations.

10. STATE ENERGY CONSERVATION PLAN

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

11. DEBARMENT

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

12. CLEAN AIR AND WATER POLLUTION ACTS

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

13. LOBBYING

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

14. INDEMNIFICATION

Recipient shall indemnify and hold harmless MTC, its Commissioners, Directors, officers, agents and employees from any and all claims, demands, suits, loss, damages, injury and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of Recipient, its officers, directors, employees, agents and contractors, or any of them, under or in connection with this Agreement; and Recipient agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, its Commissioners, Directors, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments. Recipient shall require private contractors and other individuals or entities that perform work under this Agreement to indemnify, hold harmless, and defend MTC, its Commissioners, Directors, officers, agents and employees under the same conditions and to the same extent as set forth herein.

15. MEETINGS

Recipient agrees to invite MTC to participate in all meetings held in connection with this project, including public meetings and project team meetings.

16. COMPLIANCE WITH LAWS

Recipient shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state, or local government, and any agency thereof, including, but not

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

#### 17. IDENTIFICATION OF DOCUMENTS

Recipient will ensure that all documents related to the project including meeting notices and reports state that the project is funded through the Metropolitan Transportation Commission.

In addition, Recipient will ensure that all reports and other documents completed as part of this Agreement shall carry the following notation on the front cover or title page:

"The preparation of this report has been financed in part by grants from the U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation." In addition, Recipient certifies that the Recipient and its contractors shall comply with the requirements of the California Environmental Quality Act (CEQA), California Public Resources Code Section 21,000 et seq. and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4-1 et seq. and the applicable regulations thereunder.

#### 18. SUBCONTRACTS

Recipient must include provisions of this Agreement, as applicable, modified only to show the particular contractual relationship, in any third-party contracts funded by this Agreement.

#### 19. INSURANCE REQUIREMENTS

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

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

In the event Recipient or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Recipient's insurance be primary without right of

contribution from MTC. Prior to beginning work under this contract, Recipient shall provide MTC with satisfactory evidence of compliance with the insurance requirements of this section.

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

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of Recipient and Recipient's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, a products/completed operations aggregate liability limit of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

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

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

4. Umbrella Insurance in the amount of \$5,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

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

6. Contractors' Pollution Liability Insurance. Contractors' Pollution Liability insurance for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$1,000,000 per occurrence or claim and a general aggregate limit of at least \$1,000,000. This insurance shall include coverage for, but not be limited to sudden and accidental discharges; gradual discharges, clean-up of pollutants and disposal thereof; and, mold, asbestos or lead, if an abatement contract. If Recipient disposes of Hazardous Materials under this Agreement, Recipient shall designate the disposal site and provide a certificate of insurance from the disposal facility to MTC.

Recipient's Business Automobile Liability coverage shall also be extended to cover pollution liability during loading; unloading and while in transit including, but not limited to, the perils of collision and upset. Coverage may be provided by endorsement to the general liability and automobile policies or by a separate policy.

Such policy shall contain a Waiver of Subrogation in favor of MTC.

MTC, and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Recipient's operations.

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

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

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

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

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

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

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

G. Certificates of Insurance. Prior to commencement of any work hereunder, Recipient shall deliver to Ebix, MTC's authorized insurance consultant, insurance documentation (including Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the aforementioned coverages. Such evidence of insurance shall make reference to all provisions and endorsements referred to above and shall be signed by the authorized representative of the Insurance Company shown on the insurance documentation. **The Project name shall be clearly stated on the face of each Certificate of Liability Insurance and/or Evidence of Property Insurance.**

**Recipient shall submit certificates of insurance to:**

**Ebix BPO  
P.O. Box 100085-1H  
Duluth, GA 30096-9302**

**or**

**Email to [mtc@prod.certificatesnow.com](mailto:mtc@prod.certificatesnow.com)**

**or**

**Fax to 1-888-617-2309**

H. FINANCIAL SECURITY (BONDS) – Not used

I. ADDITIONAL INSURED

The following entities are to be named as Additional Insureds under applicable sections of this Agreement.

Metropolitan Transportation Commission

20. PREVAILING WAGE RATES, APPRENTICESHIP AND PAYROLL RECORDS

As applicable, Recipient agrees to comply and assures the compliance of each third party contractor at any tier of the Project with all the requirements imposed by California Labor Code Sections 1720 et seq. and Title 8 of the California Code of Regulations Sections 16000 et seq. governing the payment of prevailing wages, as determined by the Director of the California Department of Industrial Relations and the Federal Davis-Bacon Act. In particular, Recipient's attention is drawn to Labor Code Sections 1770 (payment of prevailing wage rate), 1775 (penalty for non-payment), 1776 (payroll records), and 1777.5 (use of apprentices). Should the Federal Davis-Bacon Act governing the payment of prevailing wages apply to contract work, the higher wage rate between the federal rate and the California prevailing rate shall apply.

**ATTACHMENT C-1**  
**ADDITIONAL FEDERAL CLAUSES**

The Recipient shall include the following in all procurements that include funding from this Agreement.

- A. Equipment Purchases
  - 1. Buy America
  - 2. Cargo Preference
- B. Bonding Requirements
- C. Construction
  - 1. Davis-Bacon Act
  - 2. Contract Work Hours and Safety Standards Act
  - 3. Copeland Anti-Kickback Act
  - 4. Prompt Payment of Funds Withheld to Subcontractors

1. **Buy America Requirements**

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

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

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

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

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Date: \_\_\_\_\_

1. **Cargo Preference**

**Cargo Preference** - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FHWA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

B. **Bonding Requirements**



Bonding Requirements (Model provision): The Contractor may be required to obtain performance and payment bonds when necessary to protect the operator's interest.

The following situations may warrant a performance bond:

- a. Operator property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
- b. A contractor sells assets to or merges with another concern, and the operator, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
- c. Substantial progress payments are made before delivery of end items starts.
- d. Contracts are for dismantling, demolition, or removal of improvements.

## **2. Davis-Bacon Act**

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-

Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

( 1 ) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

( 2 ) The classification is utilized in the area by the construction industry; and

( 3 ) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* MTC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, MTC may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Highway Administration (FHWA) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the FHWA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the FHWA if the

agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the FHWA, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

( 1 ) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

( 2 ) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

( 3 ) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the FHWA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees* —(i) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for

probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees*. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the FHWA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract 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 a rate 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.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and

subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The MTC SAFE shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-0140
(a)(1)(ii)(C)	1215-0140
(a)(1)(iv)	1215-0140
(a)(3)(i)	1215-0140
	1215-0017

(a)(3)(ii)(A)	1215-0149
(c)	1215-0140
	1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

**Effective Date Note:** At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

### **3. Contract Work Hours and Safety Standards Act**

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

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

### **4. Copeland Anti-kickback Act**

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

### **5. Prompt Payment of Funds Withheld to Subcontractors**

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract



performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

**ATTACHMENT D****FAIR EMPLOYMENT PRACTICES ADDENDUM**

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

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

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

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

5. Remedies for Willful Violation:

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

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

**ATTACHMENT E****NONDISCRIMINATION ASSURANCES**

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

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

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

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

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

Appendix C;

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

Appendix D;

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

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

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

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

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

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

11. Recipient shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and

administration of STATE assisted contracts. The California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out the Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31 USC 3801 et seq.)

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

**APPENDIX A TO ATTACHMENT E**

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

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

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

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

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

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

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

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

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

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



**APPENDIX B TO ATTACHMENT E**

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

**(GRANTING CLAUSE)**

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

**(HABENDUM CLAUSE)**

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

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

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

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

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

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

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

**APPENDIX C TO ATTACHMENT E**

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

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add 'as covenant running with the land') that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, Recipient shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

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

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

**APPENDIX D TO ATTACHMENT E**

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

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, Recipient shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

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

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

**ATTACHMENT F**  
**STATE DEPARTMENT OF TRANSPORTATION REQUIREMENTS**

**Caltrans Non – Discrimination**

- A. In the performance of work undertaken pursuant to this Agreement, Recipient shall not, and shall affirmatively require that its contractors shall not, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave.
- B. Recipient shall ensure, and shall require that its contractors and all subcontractors and/or subrecipients shall ensure, that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Recipient shall comply, and ensure that its contractors and subcontractors and/or subrecipients shall comply, with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (af), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- C. Each of Recipient's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements. Recipient shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under this Agreement.
- D. Recipient shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR Part 21, and 23 CFR Part 200 are made applicable to this Agreement by this reference. Wherever the term "Contractor" appears therein, it shall mean Recipient.
- E. Recipient shall permit, and shall require that its contractors, subcontractors, and subrecipients will permit, access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by STATE to investigate compliance with these non-discrimination provisions.