

APPENDIX Q
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Required Certifications are at the end of this document.

1. Program Fraud and False or Fraudulent Statements or Related

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and the United States Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Agency certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Agency further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Agency to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.

2. Breaches and Dispute Resolution

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the County. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the County. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the County shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute – Unless otherwise directed by the County, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act of omission of the party of any of his employees, agents or others whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the County and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the County is located.

Rights and Remedies - The duties and responsibilities imposed by the Contract Document and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the County or Contractor shall constitute a waiver of any right of duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agree in writing.

3. ADA Access

The contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794; 49 USC 5301 (d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participations in, be denied the benefits of, or be subjected to discrimination under any program or activity included or resulting from this Agreement.

4. Assignability

The terms and conditions of this contract shall be binding upon the County and the contractor and their respective partners, assigns and legal representatives. The rights and obligations of the contractor under the contract may not be transferred, assigned, sublet, mortgaged or otherwise disposed of in any way. The contractor may subcontract a portion of its obligations to other firms or parties, but only after having first obtained written approval by the County, which approval shall not be unreasonably withheld.

5. Charter Bus and School Bus Requirements

The contractor agrees to comply with 49 U.S.C 5323(d), 49 U.S.C. 5323(f), 5323(r), and 49 C.F.R. part 604, and not engage in charter and school bus operations using federally funded equipment or facilities in competition with private operators of charter and school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323 (d) and 49 U.S.C. § 5323 (f);
2. FTA regulations, "Charter Service," 49 C.F.R. part 604;
3. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
4. Any other federal Charter Service regulations; or

5. Federal guidance, except as FTA determines otherwise in writing, The contractor agrees that if it engages in a pattern of violations of FTA's Charter and School Bus Service regulations, the FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the Contractor to take such remedial measure as FTA considers appropriate.
3. When operating exclusive charter or school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

6. Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. Clean Water Requirements

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Agency agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8. Lobbying (Certification Required)

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

9. Access to Records and Reports

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor

agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

10. Federal Changes

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between County and FTA (via LACMTA), as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

11. Clean Air

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

12. Contract Work Hours and Safety Standards

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 (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States 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 (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 or the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages** - The County shall be upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such

contract or any 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 (2) of this section.

4. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this certification and also a clause requiring the subcontractor to include these clauses in any subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

13. No Government Obligation to Third Parties

1. The Purchaser and Contractor acknowledges and agrees that, notwithstanding any concurrences by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Agency, or any other party (whether or not a party to the contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

14. Termination

- a. **Termination for Convenience (General Provision)** The County may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the County to be paid the Contractor. If the Contractor has any property in its possession belonging to the County, the Contractor will account for the same, and dispose of it in the manner the County directs.
- b. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the County may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set

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

- c. **Opportunity to Cure (General Provision)** The County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor thirty (30) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If the Contractor fails to remedy to the County's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within [ten (10) days] after receipt by Contractor of written notice from the County setting forth the nature of said breach or default, the County shall have the right to terminate the contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the County from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

- d. **Waiver of Remedies for any Breach** In the event that the County elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the County shall not limit the County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.
- e. **Termination for Convenience (Professional or Transit Service Contracts)** The County, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the County shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County.

- g. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any

other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of County goods, the Contractor shall, upon direction of the County, protect and preserve the goods until surrendered to the County or its agent. The Contractor and the County shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County.

- h. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the County may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the County resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

- a. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the County, acts of another Contractor in the performance of a contract with the County, epidemics, quarantine restrictions, strikes, freight embargoes; and
- b. the contractor, within [10] days from the beginning of any delay, notifies the County in writing of the causes of delay. If in the judgment of the County, the delay is excusable, the time for completing the work shall be extended. The judgment of the County shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and

obligations of the parties will be the same as if the termination had been issued for the convenience of the County.

- i. **Termination for Convenience or Default (Architect and Engineering)** The County may terminate this contract in whole or in part, for the County's convenience or because of the failure of the Contractor to fulfill the contract obligations. The County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the County, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the County may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the County.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County.

- j. **Termination for Convenience or Default (Cost-Type Contracts)** The County may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the County or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the County, or property supplied to the Contractor by the County. If the termination is for default, the County may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the County and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the County, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

- k. If, after serving a notice of termination for default, the County determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the County, after

setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

15. Government Wide Debarment and Suspension (Certification Required)

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

16. Civil Rights Requirements

The following requirements apply to the underlying contract.

1. *Nondiscrimination* - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C., 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C.6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal Transit Law, the Agency r agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. In addition, the Agency agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. *Equal Employment Opportunity* - The following equal employment opportunity requirements apply to the underlying contract:
 - a. *Race, Color, Creed, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended,. 42 U.S.C. 5332, the Agency r agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor (USDOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246 relating to Equal Employment Opportunity as amended by Executive Order 11375,

“Amending executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C., 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Agency agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Agency agrees to comply with any implementing requirements FTA may issue.

- b. *Age* – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C, 1212, the Agency agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - c. *Disabilities* – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C., 12112, the Agency agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary, to identify the affected parties.

17. Transit Employee Protective Agreements

1. The Contractor agrees to comply with applicable transit employee protective requirements as follows:
 - a. General Transit Employee Protective Requirements
 - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying

contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

b. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities

- If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body County for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

c. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas 93

- If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

2. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary, to identify the affected parties.

18. Disadvantaged Business Enterprise (DBE) Provision.

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs and with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101. A separate contract goal has not been established for this procurement. However, the County strongly encourages all bidders/offerors to include DBE subcontractors in their bids/proposals to the

greatest extent possible. The County, as a recipient of federal financial assistance, is required to implement the Los Angeles County Metropolitan Transportation Authority's (Metro's) Disadvantaged Business Program in accordance with federal regulation 49 CFR Part 26 issued by the U.S. Department of Transportation (DOT). The County is required to include all other DBE requirements and flow-down clauses in their solicitation and contract(s) as identified in the **DBE Attachment (Attachment 1)** for DOT-Assisted Contracts and Disadvantaged Business Enterprise Implementation Agreement for Subrecipients.

19. Drug and Alcohol Testing

The Contractor and its subcontractors are not subject to FTA's drug and alcohol testing rules if the contract only receives federal assistance from the Section 5310 and/or Section 5317 programs, but must comply with the Federal Motor Carrier Safety Administration (FMCSA) rule for all employees who hold commercial driver's licenses (49 CFR part 382). Contractors and its subcontractors that also receive funding under one of the covered FTA programs (Section 5307, 5309, or 5311) should include any employees funded under the Section 5310 and/or Section 5317 projects in their testing program.

20. Incorporation of Federal Transit Administration (FTA) Terms

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

21. Metric Requirements

To the extent required by DOT or FTA, the Contractor agrees to use the metric system of measurement in its Contract activities as may be required by 49 U.S.C. Section 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal government Programs," 15 U.S.C. Sect 205a; and other regulations, guidelines and policies issued by DOT or FTA. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

22. Notice of Federal Participation

In the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Purchaser agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract (Public Law 102-141).

Certificate for Buy America (Select Certification applicable)

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

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Required Certificate for Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands

and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Certification for Suspension and Debarment

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

(To be submitted with all bids exceeding \$25,000.)

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), _____, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

ATTACHMENT 1

RN-DBE INSTRUCTIONS

For

Metro Subrecipient Agencies

April 2021

**RN-DBE LANGUAGE
RACE-NEUTRAL INSTRUCTIONS
FOR
DOT-ASSISTED CONTRACTS**

The County has not established a DBE contract goal for this Agreement. However, the County strongly encourages all bidders/offerors to include DBE subcontractors in their bids/proposals to the greatest extent possible. The successful bidder/offeror that lists DBE firms in its bid/proposal will be required to submit required DBE forms with its bid/proposal and report its DBE participation obtained through race-neutral means throughout the period of performance.

1. DEFINITIONS

- a. The term “Disadvantaged Business Enterprise” or DBE means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- b. The term “Disadvantaged Business Enterprise” or -DBE. DBE classes have been determined to have a statistically significant disparity in their utilization in previously awarded transportation contracts. RC-DBE’s include all DBE groups, specifically: Black Americans, Native Americans, Asian-Pacific Americans, Hispanic Americans, Subcontinent Asian Americans, and Women
- c. The term “Race-Neutral” means a measure or program that is used to assist all small businesses. For the purposes of the DBE Program, “race-neutral” includes gender-neutrality. In addition, race-neutral participation is DBE participation obtained when a DBE goal is not established.
- d. The term “Agreement” also means “Contract”.
- e. Agency also means the local entity entering into this contract with the Consultant.
- f. The term “Proposer” shall mean prime contractor or prime consultant submitting a bid or proposal to recipient organization. The terms “Bidder” or “Offeror” may also be used in lieu of “Proposer”.
- g. The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- a. DBE’s and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (see 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of

Transportation Financial Assistance Programs”). The Contractor should ensure that DBE’s and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The Proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

- b. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBE’s.

3. SUBMISSION OF RC-DBE INFORMATION

If there is a RC-DBE contract goal on this contract, the Proposer, in order to be considered responsible and responsive, must make good faith efforts to meet the goal established for the contract. If the goal is not met, the Proposer must document adequate good faith efforts and submit documentation at the time of bid or proposal due date. If the Proposer fails to submit good faith effort documentation at the time of bid or proposal due date, the Proposer will be considered non-responsive. Only RC-DBE firms certified through the CUCP will be counted towards the contract goal; however, all DBE participation shall be collected and reported.

For contracts with RC-DBE contract goals, the resulting contractor shall utilize the specific DBEs listed unless the contractor obtains the County’s written consent and unless the County’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

All Proposers are required to submit the following items to the County:

1. The name and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform. Each DBE must be certified in the NAICS code applicable to the work the firm will perform on the contract;
3. The dollar amount of the participation of each DBE firm;
4. Written documentation of the proposer’s commitment to use the DBE subcontractor (the signed RC-DBE Commitment Form and/or other documentation) whose participation it submits to meet a RC-DBE contract goal;
5. Written confirmation from each listed DBE firm that it is participating in the contract in the kind of work and amount of work provided in the proposer’s commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

The above information shall be provided at the time noted below:

1. Under sealed bids, as a matter of responsiveness, or with initial proposals under contract negotiation procedures, or
2. No later than 5 days after bid opening as a matter of responsibility.

4. DBE PARTICIPATION GENERAL INFORMATION

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

- a. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- b. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- c. A DBE Proposer not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following;
 - i. The Proposer is a DBE and will meet the goal by performing with its own forces.
 - ii. The Proposer will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
 - iii. The Proposer, prior to bidding, made adequate good faith efforts to meet the goal.
- d. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- e. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- f. The Proposer shall list only one subcontractor for each portion of work as defined in their bid and all DBE subcontractors should be listed in the bid list of subcontractors. Firms to be counted toward the DBE Goal must be certified by bid/proposal due date.
- g. A prime contractor who is a certified DBE is eligible to claim all of the work in the agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.
- h. In order to identify certified DBEs, you must only use the California Unified Certification Program Database (CUCP). **Certifications from other agencies or organizations will not be accepted.**

5. RESOURCES

- a. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please

contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Proposers may call (916) 440-0539 for web or download assistance.

- b. Access the CUCP database at: <https://californiaucp.dbesystem.com/>.
 - i. Click on *Search for Certified Firms*
 - ii. Searches can be performed by one or more criteria
 - iii. Follow instructions on the screen

6. MATERIALS OR SUPPLIES PURCHASED FROM DBEs COUNT TOWARDS DBE CREDIT UNDER THE FOLLOWING CONDITIONS:

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

7. FOR DBE TRUCKING COMPANIES: CREDIT FOR DBEs WILL COUNT TOWARDS DBE CREDIT UNDER THE FOLLOWING CONDITIONS:

- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular agreement, and there cannot be a contrived arrangement for the purpose of meeting the DBE contract goal.
- b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the agreement.
- c. The DBE receives credit for the total value of the transportation services it provides on the agreement using trucks it owns, insures, and operates using drivers it employs.
- d. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. A DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the agreement.
- e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.
- f. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- g. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

8. TRANSIT VEHICLE MANUFACTURERS (TVM):

- a. The County shall require each Transit Vehicle Manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to complete a TVM Certification Form acknowledging that it has complied with the requirements of 49 CFR 26.49 section. The County shall maintain the TVM Certification Form on file for DBE Program compliance. The County shall check the FTA Civil Rights webpage (<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>) to validate TVMs that have an FTA approved DBE program and overall goal submissions. The County is required to submit TVM certification with its Semi-Annual Report when there is a TVM award during the reporting period.
- b. The County is required to submit within 15 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the

grant agreement. Metro's Grant Administration Department will complete the TVM Report and will submit the report on behalf of the County to FTA using the FTA Vehicle Award Form at the following website link: <https://www.surveymonkey.com/r/vehicleawardreportsurvey>. Please contact your Metro Grants representative regarding TVM reporting should you have any questions.

9. DBE SUBCONTRACTING FLOW DOWN REQUIREMENTS:

a. CONTRACT ASSURANCE

Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

b. PROMPT PAYMENT PROVISIONS

The DBE Program, 49 CFR, Part 26, requires that any delay or postponement of payment over 30 days may take place only for good cause and with the County's prior written approval. The California Business and Professions Code, under Section 7108.5, requires that on public works projects, a prime contractor or subcontractor pay to any subcontractor not later than seven (7) days after receipt of each progress payment, unless otherwise agreed to in writing. Any violation of this provision shall subject the violating Contractor or Subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor, deficient subcontract performance, or noncompliance by a Subcontractor. Any delay or postponement of payment from the above-referenced timeframes may occur only for good cause following written approval from the County. Failure to comply with this provision without prior approval from the County will constitute noncompliance, which may result in the application of appropriate administrative sanctions, including, but not limited to, withholding of payment to the Contractor of two percent (2%) of the invoice amount due per month, for every month that full payment is not made in accordance with these prompt payment requirements.

Prompt Progress Payments to Subcontractors

Contractor will include a contract clause that will require Subcontractors to pay each lower tiered Subcontractor participating on the Project for satisfactory performance of its contract no later than 7 days from the receipt of each payment the Subcontractor receives from Contractor. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE Subcontractors.

You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor no later than 30 days after the subcontractor's work is satisfactorily completed.

Prompt Payment of Withheld Funds to Subcontractors

The County shall identify one of the provisions below and include the selected provision in their federal-aid contracts to ensure prompt and full payment of retainage, if applicable, to subcontractors in compliance with 49 CFR 26.29.

Provision #1 – No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Provision #2 – No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in __ days (insert number of days and cannot be more than 30 days) after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Provision #3 – 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 all subcontractors within __ days (insert number of days and cannot be more than 30 days) after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take

place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

c. TERMINATION/SUBSTITUTION

The contractor must promptly notify the County, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor without prior written consent of the County. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the County. The contractor must give the DBE five days to respond to the contractor's written notice and advise the County and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the County should not approve the contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the County may provide a respond period shorter than five days. The County shall review the termination/substitution request based on the reasons provided in 49 CFR 26.53. The contractor will include a contract clause stating: The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the written consent of the County and that, unless the written consent of the County is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

d. FAILURE TO COMPLY

Failure of the Contractor to comply with any DBE requirement of 49 CFR Part 26 as amended, may subject Contractor to formal enforcement action or appropriate sanctions by the County, such as the termination of the contract, progressive payment withholding until deficiencies are remedied, and any additional enforcement allowed by the contract.

**INSTRUCTIONS - BIDDER'S LIST OF SUBCONTRACTORS
(DBE AND NON-DBE)
(CONSTRUCTION CONTRACTS)**

ALL PROPOSERS:

The U.S. Department of Transportation (DOT) requires THE COUNTY to maintain a “Bidders List” containing information about all firms (DBE and non-DBE) that bid, propose or quote on THE COUNTY’s DOT-assisted contracts, in accordance with 49 CFR Part 26.11, for use in the Metro’s overall triennial DBE goal-setting process. Therefore, the Proposer shall provide the requested information for every firm who submitted a quote, bid, or proposal, including the primary Proposer, whether successful or unsuccessful in their attempt to obtain a contract:

- a. Firm name;
- b. Firm address;
- c. Phone number
- d. A description of the work that each DBE will perform;
- e. Range of annual gross receipts for the last year;

It is the Proposers responsibility to verify that the DBE(s) falls into one of the following six groups in order to count towards the DBE contract goal or DBE credit: 1) Black American; 2) Asian-Pacific American; 3) Native American; 4) Hispanic American, 5) Subcontinent Asian American, and 6) Women.

RFP FORM __ – BIDDERS LIST

Proposer

RFP Number

The U.S. Department of Transportation (DOT) requires the County to create and maintain a Bidders List containing information about all firms (DBEs and non-DBEs) that bid, propose, or quote on the County's DOT-assisted contracts in accordance with 49 C.F.R., Part 26.11. The "Bidders List" is intended to be a count of all firms that are participating, or attempting to participate, on DOT-assisted contracts, whether successful or unsuccessful in their attempt to obtain a contract.

The Proposer is to complete all requested information for every firm that submitted a bid, proposal, or quote, including the Proposer itself and any proposed and rejected subconsultants. The Bidders List form shall be submitted with each proposal submitted by the Proposer to the County and for all bids, proposals, or quotes received by the Proposer for the Project. ***The Bidders List content will not be considered in evaluating the proposal or determining award of any contract.***

1.0 Proposer's Information

Name of Prime's Firm:			Phone: () -
Firm Address:			Email Address:
Type of work/services/materials provided:			
City	ST	ZIP	
Number of years in business:			
Contact Person:			Title:
Is the firm currently certified as a DBE under 49 C.F.R., Part 26? <input type="checkbox"/> Yes <input type="checkbox"/> No			Check the box below for your firm's annual gross receipts last year:
Proposer has DBE Certification in the following categories (place an "X"):			<input type="checkbox"/> Less than \$1 million
<input type="checkbox"/> Black American	<input type="checkbox"/> Asian Pacific American		<input type="checkbox"/> Less than \$5 million
<input type="checkbox"/> Native American	<input type="checkbox"/> Women		<input type="checkbox"/> Less than \$10 million
<input type="checkbox"/> Hispanic American	<input type="checkbox"/> Subcontinent Asian American		<input type="checkbox"/> Less than \$15 million
<input type="checkbox"/> Other			<input type="checkbox"/> More than \$15 million

RFP FORM __ (CONT'D) – BIDDERS LIST

Note: Each proposed subconsultant shall complete this form, and the Proposer will submit it with its proposal.

1.0 Subconsultant's Information			
Name of Subconsultant's Firm:		Phone: () -	
Firm Address:		Email Address:	
City	ST	Type of work/services/materials provided:	
ZIP			
Number of years in business:			
Contact Person:		Title:	
Is the subconsultant's firm currently certified as a DBE under 49 C.F.R., Part 26? <input type="checkbox"/> Yes <input type="checkbox"/> No		Check the box below for your firm's annual gross receipts last year:	
Subconsultant has DBE Certification in the following categories (place an "X"):		<input type="checkbox"/> Less than \$1 million	
<input type="checkbox"/> Black American	<input type="checkbox"/> Asian Pacific American	<input type="checkbox"/> Less than \$5 million	
<input type="checkbox"/> Native American	<input type="checkbox"/> Women	<input type="checkbox"/> Less than \$10 million	
<input type="checkbox"/> Hispanic American	<input type="checkbox"/> Subcontinent Asian American	<input type="checkbox"/> Less than \$15 million	
<input type="checkbox"/> Other		<input type="checkbox"/> More than \$15 million	

If necessary, this Bidders List form can be duplicated to include all firms (DBEs and non-DBEs) that have submitted a bid, proposal, or quote on this DOT-assisted Project, whether successful or unsuccessful in their attempt to obtain a contract.

INSTRUCTIONS - LOCAL AGENCY PROPOSER DBE COMMITMENT

ALL PROPOSERS:

PLEASE NOTE: It is the proposer's responsibility to verify that DBE(s) fall into one of the following groups in order to count towards the RC-DBE contract goal or Race-Neutral (RN) DBE credit: 1) Black Americans; 2) Asian-Pacific Americans; 3) Native Americans; 4) Hispanic Americans, 5) Subcontinent Asian Americans, and 6) Women. This information must be submitted with your proposal. Failure to submit the required DBE commitment will be grounds for finding the proposal nonresponsive.

A "DBE" is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: Black Americans, Native Americans, Asian-Pacific Americans, Hispanic American, Subcontinent Asian American, or Women.

The form requires specific information regarding the consultant contract: Local Agency, Location, Project Description, Proposal Date, Proposer's Name, and Contract RC-DBE goal when applicable. If no DBE contract goal has been established, include N/A.

The form has a column for the Work Item Number and Description or Services to be subcontracted to DBEs (or performed if the proposer is a DBE). The DBE prime contractors shall indicate all work to be performed by DBEs including work to be performed by its own forces, if a DBE. The DBE shall provide a certification number to the Consultant and notify the Consultant in writing with the date of decertification if their status should change during the course of the contract. Enter DBE prime consultant and subconsultant certification numbers. The form has a column for the Names of certified DBEs to perform the work (must be certified on the date proposals are due and include DBE address and phone number).

There is a column for the percent participation of each DBE. Enter the Total Claimed DBE Participation percentage of items of work submitted with proposal pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.) **Note:** If the proposer has not met the contract goal, the local agency must evaluate the proposer's good faith efforts to meet the goal in order to be considered for award of the contract.

The DBE Commitment Form must be signed and dated by the consultant submitting the proposal. Also list a phone number in the space provided and print the name of the person to contact.

INSTRUCTIONS – SUMMARY OF MONTHLY DBE PAYMENTS INFORMATION COUNTY FORM NO. XXX

SUCCESSFUL PROPOSER:

This form requires specific information regarding the disadvantaged business enterprise subcontractors paid on this construction contract.

The form must be completed for all DBEs for each monthly period. The form requires that the Reporting Period (month/year) be included. A Report Number should also be completed. This field should include a sequential number with the first form having number "1". The date prepared should also be included.

IMPORTANT: Identify **all** DBE firms that were paid during the reporting period for the project--including all DBEs listed on the DBE Commitment form, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

There is a column for the "Dollars Paid This Month". Enter the Total amount paid for each DBE firm for the reporting period. Also include the total amount paid to date, which shall include the amount paid for the current reporting period.

Include the Schedule Activity ID for construction contracts. Include a brief description for the type of work performed. The original dollar amount committed to the DBE firm should be included in the appropriate Column and any increase or decrease in the subcontract amount resulting from a change order shall be included in the "Dollar +/- resulting from Change order Activity" column.

County Form **XXX** must be signed and dated by the prime contractor's representative that is responsible for reporting DBE compliance matters. The form must be submitted no later than the 15th day of each month.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SUBCONTRACTORS PAID REPORT							
Reporting Period (Month/Yr) : <input style="width: 150px;" type="text"/>				FORM 103 <small>(Please Print or Type)</small>			
1) Project Name:		2) Report No.:	1		3) Prime:		
4) Project Location:		6) Contract No.:		8) Prepared By:			
7) Prime Contractor:		8) Original Award Amount:		9) Phone #:			
10) Address:		11) Current Contract Value:		12) Contact Person:			
15) City, State, Zip Code:		13) Payment this month:		14) Phone #:			
18) Contract Award Date:		18) Total \$ Paid to-date to Prime:		17) Signature:			
21) DBE (committed) Goal:		19) Date of last progress paym't rec'd from MTA:		20) (Title):			
22) % of project complete:							
Subrecipient - Local Agency No. 2 (Subrecipient Name)		24) DOLLARS PAID THIS MONTH	25) DOLLAR AMOUNT PAID-TO-DATE	25) (Construction only) Schedule Activity I.D.	27) TYPE OF WORK PERFORMED	28) Original Dollar Amount COMMITTED	29) Dollar +/- resulting from Change order activity
23) PRIME							
NAME							
ADDRESS							
(Area Code) PHONE		\$ -	\$ -			\$ -	
CONTACT							
SUBCONTRACTOR/SUPPLIER #1		-					
NAME							
ADDRESS							
(Area Code) PHONE		\$ -	\$ -			\$ -	
CONTACT							
SUBCONTRACTOR/SUPPLIER #2		-					
NAME							
ADDRESS							
(Area Code) PHONE		\$ -	\$ -			\$ -	
CONTACT							
SUBCONTRACTOR/SUPPLIER #3		-					
NAME							
ADDRESS							
(Area Code) PHONE		\$ -	\$ -			\$ -	
CONTACT							
SUBCONTRACTOR/SUPPLIER #4		-					
NAME							
ADDRESS							
(Area Code) PHONE		\$ -	\$ -			\$ -	
CONTACT							
SUBCONTRACTOR/SUPPLIER #5		-					
Special Instructions: The Prime shall make prompt payment of all monies due and owed to DBE and non-DBE firms within 7 business days upon receipt of payment from Agency as per contract agreement and Prompt Payment Act. Payment of retention shall be made to all DBE and non-DBE subcontractors within 7 days after satisfactory completion of the subcontracted work. The Form 103 is due by the 15th of each month and should reflect all payments made to subs through the last day of the previous month. The Prime must report monthly for the life of the contract, even if the sub(s) did not perform any work for the previous month.							

APPENDIX Q (Additional Federal Required Provisions)

Attachment 2

SAM.GOV Registration Steps

The FTA requires Metro to ensure that none of its subrecipients, or their contractors and subcontractors, are suspended, debarred, ineligible or voluntarily excluded from participation in federally assisted transactions or procurements. In the spirit of this requirement Metro has established procedures to perform Federal suspension and debarment checks associated with each federal award and contracts, via the online System for Award Management (SAM) at <https://sam.gov>. Subrecipients, contractors and their subcontractors are required to be registered in the SAM system, and Metro staff needs to verify their eligibility before any funding is provided for services. You must have an active entity registration in SAM.gov to receive a federal contract or federal assistance. SAM.gov is the official free, government-operated website for management of government awards. There is NO charge to register or maintain your entity registration record in SAM.gov.

What do I need to get started?

Unique Entity Identifier (UEI):

You need a Unique Entity Identifier, (UEI) to register your entity in SAM.gov. UEIs are unique for each physical location you register. If you do not have one, request a UEI for **free** by visiting [Dun & Bradstreet \(D&B\)](#). The authoritative UEI at this time is the Data Universal Numbering System (DUNS) Number. It takes no more than 1-2 business days to obtain a DUNS.

Taxpayer Identification Number (TIN):

You need your entity's Taxpayer ID Number (TIN) and Taxpayer Name (as it appears on your most recent tax return). Foreign entities that do not pay employees within the U.S. do not need to provide a TIN. Your TIN is usually your Employer Identification Number (EIN) assigned by the Internal Revenue Service (IRS). Sole proprietors may use their Social Security Number (SSN) assigned by the Social Security Administration (SSA) as their TIN; however, we strongly encourage you to obtain a [free EIN from the IRS](#). Allow approximately two weeks before your new EIN is ready for use when registering in SAM.gov.

Login to SAM.gov

1. Navigate to <https://sam.gov>.
2. Select the “Sign In” button in the upper right corner. Select “Accept” to accept the US Government System terms.
3. After selecting “Accept,” the system will redirect you to login.gov.
4. Enter your login.gov credentials and select “Sign In.” The system may prompt you to enter a one-time security code. (You will receive this code via the authentication method you selected during account creation.) *Note: If you do not already have a Login.gov account, please “**Create an Account**” and follow the steps.*
5. After signing in, the system will redirect you to your SAM.gov workspace.

Start a New Entity Registration in SAM.gov

1. From the Workspace select the “Register Entity” button.
2. Select the “Start Registration” button at the bottom of the registration overview page.
3. Review the Before You Start information and gather all required information needed to complete your registration.
4. Select the “Continue” button to proceed.
5. Complete and submit the online registration. If you have all the necessary information ready, this should take approximately 45 minutes to complete. The time to complete could vary depending on the size and complexity of your registration. Steps to complete the registration follow in the next section.

Completing an Entity Registration in SAM.gov

1. Select your type of entity.
2. Select “Yes” to “Do you wish to bid on contracts?”
3. Select “Yes” to “Do you want to be eligible for grants and other federal assistance?”
4. Complete the Core Data section:
 - a) Validate your UEI information on the page.
 - b) Enter Business Information (TIN, etc.) This page is also where you create your Marketing Partner Identification Number (MPIN). Remember your MPIN as it will serve as your electronic signature for the IRS Consent to Disclosure of Tax Information on the following page.
 - c) Enter your CAGE Code if you have one. CAGE codes are tied to your UEI and cannot be reused. If you do not have a CAGE Code for the UEI you are registering, do not worry; we will assign one after your registration is submitted. Foreign registrants must enter their NCAGE Code before proceeding.
 - d) Enter General Information (business types, organization structure, etc.) about your entity.

- e) Provide your entity's Financial Information, i.e., U.S. bank Electronic Funds Transfer (EFT) Information for federal government payment purposes. Foreign entities do not need to provide EFT information.

Banking information is mandatory for all U.S. located entities to complete the SAM Entity Registration. SAM never releases banking information to the public in either its public search view or public data file. Sensitive information is only available to authorized U.S. government officials. Agency financial offices receive registrant financial information from SAM. Many agencies use SAM information to make the registrant payments. When properly executed, Electronic Funds Transfer (EFT) makes for a faster, more efficient method of payment. Although you may not receive any payments from Agency financial offices, it is built into the registration process, so you will be required to include that information. Per all Metro's experience with this registration process, all the information inputted is 100% safe.

- f) Answer the Executive Compensation questions.
 - g) Answer the Proceedings Details questions.
 - h) Provide your public search authorization. If you choose to limit the users who can search, a federal user will need to be logged in to view your registration.
5. Complete the "Assertions" section
 6. Complete the Points of Contact (POCs) section: Your Electronic Business POC is essential to the procurement process. Other government systems, such as the CAGE program, will use your government POC to contact you. List someone with direct knowledge of this registration for both of those POCs.
 7. It is very important that you **"opt in"** for public review so that we may perform the required review
 8. Make sure to select "Submit" after your final review.

You will receive a Registration Submitted – Confirmation message on the screen. If you do not see this message, you have not submitted your registration.

How long will it take?

Allow up to 12-15 business days after you submit before your registration is active in SAM.gov. **Once the registration is active, please provide to Metro your SAM.gov lookup of your account (screenshot or pdf print) showing that your account is "active".**

How do I check the status of an Entity Registration?

1. Login to SAM.gov (Registration Status is not available without login)
2. From your workspace, select Home from the menu, then select "Check Registration Status" on the homepage. The same "Check Registration Status" is also located on the Entity Registration landing page

3. From the check entity registration status you can enter a public entity's Unique Entity Identifier, CAGE code, or EFT Identifier
4. The status provides a quick summary for an entity, displaying the progress of that entity's most recent record. It will also display what steps remain until it is completed. The steps required are determined based on the purpose of registration.
5. Select the topic under the 'More About' for additional help on any of the status symbols or steps
6. To get the full entity details with reps and certs or any exclusions or to see non-public entities, you will need to use the main search.

For FREE help registering in SAM.gov, contact support at the [Federal Service Desk \(FSD\)](#).