

1 COOPERATIVE AGREEMENT NO. C-0-1802

2 BETWEEN

3 ORANGE COUNTY TRANSPORTATION AUTHORITY

4 AND

5 CITY OF COSTA MESA

6 FOR

7 FEDERAL TRANSPORTATION ADMINISTRATION SECTION 5307 PROJECT

8 FAIRVIEW CHANNEL MULTI-PURPOSE TRAIL

9 THIS AGREEMENT is effective this _____ day of _____ 2010, by and
 10 between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184,
 11 Orange, California 92863-1584, a public corporation of the State of California (hereinafter referred to
 12 as "AUTHORITY"), and the City of Costa Mesa, a municipal corporation duly organized and existing
 13 under the constitution and laws of the State of California (hereinafter referred to as "CITY").

14 **RECITALS:**

15 WHEREAS, the AUTHORITY through the Transportation Enhancement Call for Projects of
 16 2010 (TE) offers an opportunity for local agencies to receive Federal Transit Administration (FTA),
 17 Section 5307 funds to be used for construction of transit related transportation enhancement
 18 projects including bicycle and pedestrian projects; and

19 WHEREAS, the Authority is the designated grant recipient for FTA Section 5307 funds: and

20 WHEREAS, on September 27, 2010, the AUTHORITY's Board of Directors, approved
 21 providing funding of up to Five Hundred Thousand Dollars (\$500,000) or 61% of the total project
 22 cost, final cost is determined at bid award, in FTA Section 5307 funds for the Fairview Channel
 23 Multi-Purpose Trail project, defined in the CITY's application for TE funds which is hereby
 24 incorporated by reference and herein referred to as "PROJECT": and

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WHEREAS, the CITY has agreed to provide non federal funding of up to Three Hundred Twenty One Thousand Dollars (\$321,000) or 39% of the total project cost as determined at bid award, as the required local match for a total PROJECT cost of up to Eight Hundred Twenty One Thousand Dollars (\$821,000); and

WHEREAS, CITY and AUTHORITY agree that the maximum funding provided by AUTHORITY shall not exceed Five Hundred Thousand Dollars (\$500,000) in FTA, Section 5307 funds in accordance with the FTA 5307 Funding Plan shown as Exhibit A, which is attached herein and incorporated by reference; and

WHEREAS, the CITY agrees to act as lead Agency for engineering, right-of-way acquisition, construction management and construction; and

WHEREAS, AUTHORITY and CITY agree to enter into this cooperative agreement to enable AUTHORITY to pass along the FTA section 5307 grant funds received from FTA to CITY, contingent upon funding being approved by FTA; and

WHEREAS, this Cooperative Agreement defines the specific terms and conditions, funding and compliance responsibilities between AUTHORITY and CITY (hereinafter referred to as "PARTIES") for completion of the PROJECT; and

WHEREAS, on June 22, 2009 and on July 12, 2010, and with pending future Board action related to the annual FTA, Section 5307 Program of Projects, the AUTHORITY's Board of Directors has authorized the Authority's Chief Executive Officer to file and execute grant related agreements needed to secure and make available the FTA, Section 5307 grant program; and

WHEREAS, the CITY's Council approved the Cooperative Agreement on _____ day of _____ 2010.

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1 NOW, THEREFORE, it is mutually understood and agreed by AUTHORITY and CITY as
2 follows:

3 **ARTICLE 1. COMPLETE AGREEMENT**

4 A. This Agreement, including any attachments incorporated herein and made applicable
5 by reference, constitutes the complete and exclusive statement of the term(s) and condition(s) of
6 this agreement between AUTHORITY and CITY and it supersedes all prior representations,
7 understandings, and communications. The invalidity in whole or in part of any term or condition of
8 this Agreement shall not affect the validity of other term(s) or condition(s) of this Agreement. The
9 above referenced Recitals are true and correct and are incorporated by reference herein.

10 B. AUTHORITY'S failure to insist on any instance(s) of CITY's performance of any
11 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of
12 AUTHORITY's right to such performance or to future performance of such term(s) or condition(s),
13 and CITY's obligation in respect thereto shall continue in full force and effect. Changes to any
14 portion of this Agreement shall not be binding upon AUTHORITY except when specifically confirmed
15 in writing by an authorized representative of AUTHORITY by way of a written amendment to this
16 Agreement and issued in accordance with the provisions of this Agreement.

17 C. CITY's failure to insist on any instance(s) of AUTHORITY's performance of any
18 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of
19 CITY's right to such performance or to future performance of such term(s) or condition(s), and
20 AUTHORITY's obligation in respect thereto shall continue in full force and effect. Changes to any
21 portion of this Agreement shall not be binding upon CITY except when specifically confirmed in
22 writing by an authorized representative of CITY by way of a written amendment to this Agreement
23 and issued in accordance with the provisions of this Agreement.

24 **ARTICLE 2. SCOPE OF AGREEMENT**

25 This Agreement specifies the roles and responsibilities of the PARTIES as they pertain to the
26 subjects and projects addressed herein. Both AUTHORITY and CITY agree that each will cooperate

1 and coordinate with the other in all activities covered by this Agreement and any other supplemental
2 agreements that may be required to facilitate purposes thereof.

3 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

4 AUTHORITY agrees to the following responsibilities for PROJECT:

5 A. AUTHORITY shall formally request on behalf of the CITY that the Southern California
6 Association of Governments (SCAG) amend the Federal Transportation Improvement Program (FTIP)
7 to provide FTA funding to the project, whereby AUTHORITY's performance under this Agreement is
8 contingent upon SCAG and FHWA approval.

9 B. AUTHORITY, in accordance with the schedule provided by the CITY and upon request
10 for reimbursement not more frequently than quarterly in arrears, shall reimburse CITY for 61% of FTA
11 eligible PROJECT expenditures in an amount not to exceed Five Hundred Thousand Dollars
12 (\$500,000).

13 C. The AUTHORITY shall monitor CITY's compliance with the requirements of FTA's Title
14 VI of the Civil Rights Act of 1964, as per Exhibit F titled "Required Federal Clauses," which is herein
15 incorporated by reference and made a part of this Agreement.

16 D. AUTHORITY to reimburse CITY within thirty (30) days following receipt of an invoice
17 which is complete, properly prepared, and complies with the requirements of ARTICLE 5 below.

18 E. AUTHORITY shall cancel projects for which the CITY has not awarded a construction
19 contract by June 30th of the programmed year.

20 **ARTICLE 4. RESPONSIBILITIES OF CITY**

21 CITY agrees to the following responsibilities for PROJECT:

22 A. CITY agrees that all funds received pursuant to ARTICLE 3 paragraph A, shall be
23 used exclusively to construct the PROJECT per the TE Call for Projects TE application provided by
24 the CITY and herein incorporated by reference.

25 B. CITY will act as the lead AGENCY for the engineering, right-of-way, construction and
26 construction management of the PROJECT.

1 C. CITY is responsible for submitting quarterly reports as specified in Exhibit B titled
2 "FTA 5307 Quarterly Report Form" included in this agreement and incorporated into and made part
3 of the agreement for the PROJECT due on April 15, August 15, October 15 and January 15 of each
4 year.

5 D. CITY acknowledges that if the construction contract for the construction phase for the
6 project is not awarded, by June 30 within the fiscal year identified in Exhibit A, titled "FTA 5307
7 Funding Plan", the proposed funding will be cancelled by AUTHORITY.

8 E. CITY agrees to provide a minimum of 39% of the final project cost in City funds for
9 construction as the required local match. Based on the existing budget, this amount is estimated to
10 be Three Hundred Twenty One Thousand Dollars (\$321,000). Actual match will be determined
11 based on construction contract award amount.

12 F. CITY agrees that the overall budget for this PROJECT is not-to-exceed amount of
13 Eight Hundred Twenty One Thousand Dollars (\$821,000); contingent on approval of FTA Section
14 5307 funds by the FTA.

15 G. CITY agrees that any cost overruns shall be the responsibility of the CITY.

16 H. CITY agrees that any cost savings in construction will be divided proportionally
17 between AUTHORITY and CITY.

18 I. CITY is responsible for completing the PROJECT as specified in Exhibit A, timely use
19 of funds requirements, and to abide by all TE Call for projects guidelines, FTA Section guidelines,
20 Exhibit F and any and all other applicable federal state or local requirements or laws. The CITY shall
21 comply with the sub-recipient monitoring process performed by the Authority and/or the
22 AUTHORITY's designee.

23 J. CITY is required to maintain and provide to the AUTHORITY upon request:

- 24 a. An annual FTA Compliance Self-Certification;
- 25 b. Notification to beneficiaries of protection under Title VI;
- 26 c. Title VI complaint procedure;

1 d. Meaningful access to limited-English persons (LEP), low-income and minority
2 persons.

3 K. CITY agrees to comply with all Federal Transit Administration third party procurement
4 and contracting laws and regulations and to include required federal clauses in all third party
5 contracts, see Exhibit F titled "Required Federal Clauses".

6 L. CITY agrees to provide to AUTHORITY a thirty (30) days written notice, should CITY
7 decide to cancel or terminate the project for which it is seeking funding under this Agreement.

8 **ARTICLE 5. REQUEST FOR REIMBURSEMENT**

9 A. CITY shall contribute at least 39% required local contribution of matching funds (other
10 than Federal Funds), if any is specified within this Agreement or any attachments hereto, toward the
11 actual costs of PROJECT.

12 B. Not more frequently than quarterly, CITY shall prepare and submit to AUTHORITY an
13 invoice as specified in Exhibit C, titled "Invoice," and supporting documentation as specified in
14 Exhibit D, titled "FTA Funding Reimbursement – Required Supporting Documents" included in this
15 Agreement, which is incorporated into and made part of this Agreement. CITY's invoice shall include
16 allowable PROJECT costs incurred and paid for by CITY consistent with the Project's Scope of
17 Work. The invoice submitted by CITY shall be signed by an authorized agent who can duly certify
18 the accuracy of the included information. Advance payments by AUTHORITY are not allowed.

19 C. The invoice must be submitted on CITY's letterhead.

20 D. The invoice shall be submitted by CITY and in duplicate to AUTHORITY's Accounts
21 Payable Office. Each invoice shall include the following information:

22 a. Agreement Number C-0-1802;

23 b. The total of PROJECT expenditures shall specify the percent and amount of
24 Federal Funds to be reimbursed which shall not exceed 61% of the total eligible expenditures.
25 Support documentation for all expenses invoiced.

26 c. Adequate detail describing all work completed.

1 d. Such other information as requested by AUTHORITY.

2 E. Eligible Project costs are described in the Federal Grant and in the FTA guidelines.

3 F. CITY should consult with AUTHORITY's Project Manager for questions regarding
4 non-reimbursable expenses.

5 G. Total payments shall not exceed the Funding Amount specified in ARTICLE 3
6 paragraph B above. No invoice will be processed by AUTHORITY after the Federal Grant
7 termination date.

8 H. CITY shall submit final invoice no later than ninety (90) days after final acceptance of
9 project.

10 I. If any amounts paid to CITY are disallowed or not reimbursed by the FTA for any
11 reason, CITY shall remit to AUTHORITY the disallowed or non-reimbursed amount(s) within 30 days
12 from receipt of AUTHORITY's notice. All payments made by AUTHORITY hereunder are subject to
13 the audit provisions contained herein and within the Federal Grant.

14 **ARTICLE 6. DELEGATED AUTHORITY**

15 The actions required to be taken by CITY in the implementation of this Agreement are
16 delegated to its Director of Public Works, or designee, and the actions required to be taken by
17 AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's Chief
18 Executive Officer, or designee.

19 **ARTICLE 7. AVAILABILITY OF FUNDS**

20 This Agreement will allow AUTHORITY to pass along the Federal Funds from the Federal
21 Grant to CITY. The Federal Funds are subject to the terms and conditions of this Agreement, the
22 Federal Grant, and the applicable requirements of AUTHORITY and the FTA. This Agreement
23 neither implies nor obligates any funding commitment by AUTHORITY for the services as specified
24 in Exhibit A titled "Funding Plan." All funds are contingent upon federal appropriation and the FTA's
25 approval of a grant application. If a Letter of No Prejudice is issued by the FTA, CITY shall assume
26 all the risk of spending the Local Match early on in the Project.

1 **ARTICLE 8. AUDIT AND INSPECTION**

2 AUTHORITY and CITY shall maintain a complete set of records in accordance with generally
3 accepted accounting principles. Upon reasonable notice, CITY shall permit the authorized
4 representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books, accounts,
5 and other data and records of CITY for a period of four (4) years after final payment, or until any on-
6 going audit is completed. For purposes of audit, the date of completion of this Agreement shall be
7 the date of AUTHORITY's payment of CITY's final billing (so noted on the invoice) under this
8 Agreement. AUTHORITY shall have the right to reproduce any such books, records, and accounts.
9 The above provision with respect to audits shall extend to and/or be included in construction
10 contracts with CITY's contractor.

11 **ARTICLE 9. INDEMNIFICATION**

12 A. CITY shall indemnify, defend and hold harmless AUTHORITY, its officers, directors,
13 employees and agents from and against any and all claims (including attorney's fees and reasonable
14 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death,
15 worker's compensation subrogation claims, damage to or loss of use of property alleged to be
16 caused by the negligent acts, omissions or willful misconduct by CITY, its officers, directors,
17 employees or agents in connection with or arising out of the performance of this Agreement.

18 B. AUTHORITY shall indemnify, defend and hold harmless CITY, its officers, directors,
19 employees and agents from and against any and all claims (including attorney's fees and reasonable
20 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death,
21 worker's compensation subrogation claims, damage to or loss of use of property alleged to be
22 caused by the negligent acts, omissions or willful misconduct by AUTHORITY, its officers, directors,
23 employees or agents in connection with or arising out of the performance of this Agreement.

24 C. The indemnification and defense obligations of this Agreement shall survive its
25 expiration or termination.

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1 **ARTICLE 10. REQUIRED FEDERAL CLAUSES AND CERTIFICATIONS**

2 The CITY is required to adhere to the applicable federal clauses provided in Exhibit F titled
3 "Required Federal Clauses," which is incorporated herein by reference and hereby made a part of
4 this Agreement.

5 **ARTICLE 11. ADDITIONAL PROVISIONS**

6 The AUTHORITY and CITY agree to the following mutual responsibilities:

7 A. Term of Agreement: This Agreement shall continue in full force and effect through
8 project completion and final acceptance by AUTHORITY, or 36 months from date of construction
9 contract award, whichever is earlier. This Agreement may be extended at the mutual consent of both
10 parties.

11 B. Termination: This agreement is null and void if project is not funded. AUTHORITY shall
12 cancel projects for which the CITY has not awarded a construction contract by June 30th of the
13 programmed year. This Agreement may be terminated by either party after giving thirty (30) days
14 written notice. This Agreement shall not be terminated without mutual agreement of both parties.

15 C. This Agreement may be amended in writing at any time by the mutual consent of both
16 parties. No amendment shall have any force or effect unless executed in writing by both parties.

17 D. AUTHORITY and CITY shall comply with all applicable federal, state, and local laws,
18 statutes, ordinances and regulations of any governmental authority having jurisdiction over the
19 PROJECT.

20 E. Legal Authority: AUTHORITY and CITY hereto consent that they are authorized to
21 execute this Agreement on behalf of said parties and that, by so executing this agreement, the
22 parties hereto are formally bound to the provisions of this Agreement.

23 F. Severability: If any term, provision, covenant or condition of this Agreement is held to
24 be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the
25 remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or
26 condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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G. Counterparts of Agreement: This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement. Facsimile signatures will be permitted.

H. Force Majeure: Either Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of such cause is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

I. Assignment: Neither this Agreement, nor any of the PARTIES rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party in its sole and absolute discretion. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

J. Obligations To Comply with Law: Nothing herein shall be deemed nor construed to authorize or require any Party to issue bonds, notes or other evidences of indebtedness under the terms, in amounts, or for purposes other than as authorized by local, state or federal law.

K. Governing Law: The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.

L. Litigation fees: Should litigation arise out of this Agreement for the performance thereof, the court shall award costs and expenses, including attorney's fees, to the prevailing party.

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1 M. Notices: Any notices, requests, or demands made between the parties pursuant to this
2 Agreement are to be directed as follows:

To CITY:	To AUTHORITY:
City of Costa Mesa	Orange County Transportation Authority
77 Fair Drive Costa Mesa, CA 92626	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: Mr. Peter Naghavi Director, Public Services Department 714-754-5182 Email: pnaghavi@ci.costa-mesa.ca.us	Attention: Ms. Reem Hashem Principal Contract Administrator 714-560-5446 Email: rhashem@octa.net Cc: Ben Ku, Senior Transportation Funding Analyst

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This agreement shall be effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-0-1802 to be executed on the date first above written.

CITY OF COSTA MESA

ORANGE COUNTY TRANSPORTATION AUTHORITY

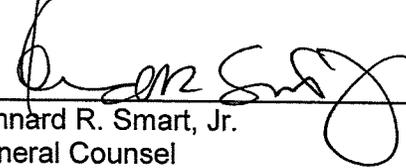
By: _____
Allan R. Mansoor
Mayor

By: _____
Will Kempton
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM:

By: _____
Julie Folcik
City Clerk

By: _____

Kennard R. Smart, Jr.
General Counsel

APPROVED AS TO FORM:

APPROVAL RECOMMENDED:

By: _____
Kimberly Hall Barlow
City Attorney

By: _____
Kia Mortazavi
Executive Director, Planning

Dated: _____

Dated: _____

Handwritten initials and marks



EXHIBIT A: FTA 5307 FUNDING PLAN

Project Title: Fairview Channel Multipurpose Trail

Agency: Costa Mesa Date: October 25, 2010

Schedule	Completion Date
Draft Environmental Document	Complete
Final Environmental Document	Nov. 2010
Begin Design Engineering	Complete
Plans, Specifications, and Cost Estimates complete	Sept. 2010
Start Right-of-Way Acquisition	N/A
Right-of-Way Certification	N/A
Submit Request for Authorization for Const (E-76)	Nov. 2010
Ready to Advertise	Feb. 2011
Award Construction	May 2011
Project Completion (open for use)	Nov. 2011

Funding Table:

Preliminary Engineering (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation
City Funds	2010-11	\$65

Right-of-Way (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation

Construction (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation
FTA 5307	2010-11	\$500
City Funds	2010-11	\$256

Name/Title: Bart Mejia

Signature:

Phone: (714) 754-5291 Email: bmejia@ci.costa-mesa.ca.us



EXHIBIT B: FTA 5307 QUARTERLY REPORT FORM

Project Title: _____

Agency: _____ Date: _____

Schedule	Original Completion Date	Current Completion Date
Draft Environmental Document		
Final Environmental Document		
Begin Design Engineering		
Plans, Specifications, and Cost Estimates complete		
Start Right-of-Way Acquisition		
Right-of-Way Certification		
Submit Request for Authorization for Const (E-76)		
Ready to Advertise		
Award Construction		
Project Completion (open for use)		

Funding Table:

Preliminary Engineering (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation	Current Estimates	Actual Expended	Remaining Allocation

Right-of-Way (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation	Current Estimates	Actual Expended	Remaining Allocation

Construction (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation	Revised Allocation	Actual Expended	Remaining Allocation

Major Activities:

Status:

Issues:

Name/Title:

Signature:

Phone:

Email:



EXHIBIT C: INVOICE TEMPLATE

Project Title: _____

Agency: _____ Date: _____

To: Orange County Transportation Authority
550 S Main Street
P.O. Box 14184
Orange, CA 92863-1584
Attn: Adriann Cardoso

Invoice Number _____
Invoice Date _____
Contract Number _____
Approved FTA 5307 _____
Actual Local Match _____ 0%

Date	Qty	Description	Unit Price	Total	FTA 5307	Local Match

Invoice Number	Date	Expended FTA 5307	Cumulative FTA 5307
			\$ 500,000
1		\$ -	\$ 500,000
2		\$ -	\$ 500,000
3		\$ -	\$ 500,000

I hereby certify that the statements provided here are true and correct regarding the _____ Project.

The invoice is a true, complete and correct statement of work performed, reimbursable costs and progress;
The backup information included with the invoice is true, complete and correct in all material respects.

Signed Date

* This is a template. Local agencies may develop their own form as long as all the relevant information is present.



**EXHIBIT D: FTA FUNDING REIMBURSEMENT –
REQUIRED SUPPORTING DOCUMENTS**

Project Title: _____

Agency: _____ Date: _____

Required Attachments:

- Detailed Project Description
- Invoice

Supporting Documentation:

- Vendor/Contract Invoices
- Cancelled Checks or Proof of Payment with Payment Date
- Council Action approving Contract (First Invoice Only)
- Cost Estimate Update (First Invoice Only)



EXHIBIT E: FTA 5307 FINAL PROJECT REPORT FORM

Date _____

Instructions

The responsible agency should fill out the following: 1) Final Project Form, 2) Final Cost, 3) Certificate of Completion. Page 4, the OCTA Staff Verification will be filled out by OCTA staff. In addition, the agency must attach before (if available) and after **photographs** of the project site and the address or location of the site under the Location and Scope of work section.

Agency

Project

Location and Scope of Work

Verification of Match
 (Actual Expenditures)

Phase	Local Match			FTA 5307 Grant	Other OCTA Funding	Total	Match Rate
	(ENTER SOURCE)	(ENTER SOURCE)	(ENTER SOURCE)				
Engineering	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%
Right-of-Way	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	

Project Schedule

Phase	Proposed	Actual
Draft Environmental Document		
Final Environmental Document		
Begin Design Engineering		
Plans, Specifications, and Cost Estimates complete		
Start Right-of-Way Acquisition		
Right-of-Way Certification		
Ready to Advertise		
Award Construction		
Project Completion (open for use)		

REQUIRED FEDERAL CLAUSES

DEFINITIONS

The Orange County Transportation Authority, (hereinafter referred to as "AUTHORITY").
_____, (hereinafter referred to as "CITY").

The following provisions apply to all agreements regardless of its value:

ARTICLE 1. FEDERAL CHANGES

CITY 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 agreement between the AUTHORITY and FTA , as they may be amended or promulgated from time to time during this Agreement. CITY's failure to comply shall constitute a material breach of contract.

ARTICLE 2. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

AUTHORITY and CITY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the AUTHORITY, CITY, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the underlying Agreement. CITY agrees to include these requirements in all of its subcontracts.

ARTICLE 3. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

A. CITY acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Accordingly, by signing this Agreement, CITY 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 Agreement of the FTA assisted project for which this Agreement's work is being performed. CITY also 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 penalties of the Program Fraud Civil Remedies Act of 1986 on the CITY to the extent the Federal Government deems appropriate.

B. CITY 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 an agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under the authority of 49 U.S.C. §5307 et seq., the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n) (1) et seq. on the CITY, to the extent the Federal Government deems appropriate. CITY agrees to include this requirement in all of its subcontracts.

ARTICLE 4. CIVIL RIGHTS ASSURANCE

During the performance of this Agreement, CITY, for itself, its assignees and successors in interest agree as follows:

A. Compliance with Regulations: CITY shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") 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.

B. Nondiscrimination: CITY, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CITY 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.

C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CITY of the CITY's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports: CITY shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the AUTHORITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CITY is in the exclusive possession of another who fails or refuses to furnish this information the CITY shall so certify to the AUTHORITY as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the CITY's noncompliance with nondiscrimination provisions of this Agreement, the AUTHORITY shall impose Agreement sanctions as it may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CITY under the Agreement until the CITY complies; and/or

2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Title VI of the Civil Rights Act. In determining the types of property or services to acquire, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000d et seq. and DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of

Transportation—Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21. In addition, FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for FTA Recipients,” 05-13-07, provides FTA guidance and instructions for implementing DOT’s Title VI regulations.

G. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.

H. Incorporation of Provisions: CITY shall include the provisions of paragraphs (A) through (H) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CITY shall take such action with respect to any subcontract or procurement as the AUTHORITY may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a CITY becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CITY may request the AUTHORITY to enter into such litigation to protect the interests of the AUTHORITY, and, in addition, the CITY may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 5. DISADVANTAGED BUSINESS ENTERPRISES

A. In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Orange County Transportation Authority (AUTHORITY) has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs”. The project is subject to these stipulated regulations. In order to ensure that the Authority achieves its overall DBE Program goals and objectives, the Authority encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of the Authority to:

1. Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have equitable access to participate in all of Authority’s DOT-assisted contracting opportunities.
2. Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
3. Ensure non-discrimination in the award and administration of AUTHORITY’s DOT-assisted contracts.
4. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
5. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
6. Help remove barriers to the participation of DBEs in DOT-assisted contracts.
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

B. CITY shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the Authority’s DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

C. AUTHORITY's New Race-Neutral DBE Policy Implementation Directives: Pursuant to recently released Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, the Authority has implemented a wholly Race-Neutral DBE Program.

A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, AUTHORITY does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. CITY shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, CITY shall adhere to race-neutral DBE participation commitment(s) made at the time of contract award.

D. Definitions: The following definitions apply to the terms as used in these provisions:

1. "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. "Small Business Concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.

3. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Authority pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:

a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

e. "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

f. Women, regardless of ethnicity or race.

4. "Owned and Controlled" means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more

EXHIBIT F

"Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.

5. "Manufacturer" means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the CITY.

6. "Regular Dealer" means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

7. "Other Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or AUTHORITY to meet the social and economic disadvantage criteria described below.

a. Social Disadvantage: The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.

i. The individual must demonstrate that he/she has personally suffered social disadvantage.

ii. The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.

iii. The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.

iv. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.

v. A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

b. Economic Disadvantage

i. The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.

ii. The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

- availability of financing
- bonding capability
- availability of outside equity capital
- available markets

With respect to the individual and the business concern:

- personal and business assets
- personal and business net worth
- personal and business income and profits

E. Race-Neutral DBE Submission and Ongoing Reporting Requirements (Post-Award).

EXHIBIT F

CITY shall complete and submit the following DBE exhibits (forms) at the times specified: "Monthly Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification" (Form 103). If CITY is a DBE firm and/or has proposed to utilize DBE firms, CITY will be required to complete and submit a Form 103 to AUTHORITY by the 10th of each month until completion of the contract to facilitate reporting of race-neutral DBE participation, following the first month of contract activity. CITY shall report the total dollar value paid to DBEs for the applicable reporting period. CITY shall also report the DBE's scope of work and the total subcontract value of commitment for each DBE reported. CITY is advised not to report the participation of DBEs toward CITY's race-neutral DBE attainment until the amount being counted has been paid to the DBE. Upon completion of the contract, CITY will be required to prepare and submit to the Authority a "Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification" (Form 103) clearly marked "Final" to facilitate reporting and capturing actual DBE race-neutral attainments. CITY shall complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of the contract.

F. DBE Eligibility and Commercially Useful Function Standards: A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, CITY of material or supplies, or as a trucking company. 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. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources: The CUCP web site, which can be accessed at <http://www.californiaucp.com>; or the Caltrans "Civil Rights" web site at <http://www.dot.ca.gov/hq/bep>. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815; Telephone: (916) 445-3520.

G. DBE Crediting Provisions: When a DBE is proposed to participate in the contract, either as a prime CITY or Subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards race-neutral DBE participation. If CITY is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's race-neutral DBE attainment. CITY is to calculate and credit participation by eligible DBE CITYs of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows: Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer. The following types of fees or commissions paid to DBE Subcontractors, Brokers, and Packagers may be credited toward the prime CITY's race-neutral DBE attainment,

EXHIBIT F

provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including: Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract; Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies; Fees and commissions charged for providing any insurance specifically required in the performance of the Contract. CITY may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows: The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of 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, so 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. If CITY listed a non-certified DBE 1st tier subcontractor to perform work on this contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor or CITY, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

H. Performance of DBE Subcontractors: DBE subcontractors listed by CITY in its "DBE Race-Neutral Participation Listing" (Exhibit D-2) submitted at the time of proposal submittal shall perform the work and supply the materials for which they are listed, unless the CITY has received prior written authorization from the Authority to perform the work with other forces or to obtain the materials from other sources. CITY shall provide written notification to the AUTHORITY in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

I. Additional DBE Subcontractors: In the event CITY identifies additional DBE subcontractors or suppliers not previously identified by CITY for race-neutral DBE participation under the contract, CITY shall notify the Authority by submitting "Request for Additional DBE Firm" to enable CITY to capture all race-neutral DBE participation. CITY shall also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

J. DBE Certification Status: If a listed DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify CITY in writing with the date of decertification. If a non-DBE subcontractor becomes a certified DBE during the life of the

project, the DBE subcontractor shall notify CITY in writing with the date of certification. CITY shall furnish the written documentation to AUTHORITY in a timely manner.

K. CITY's Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, CITY shall affirm that they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, CITY shall affirm that they will consider, and utilize subcontractors and CITYs, in a manner consistent with non-discrimination objectives.

ARTICLE 6. ACCESS TO RECORDS AND REPORTS

CITY shall provide AUTHORITY, the U.S. Department of Transportation (DOT), the Comptroller General of the United States, or other agents of AUTHORITY, such access to CITY's accounting books, records, payroll documents and facilities of the CITY which are directly pertinent to this Agreement for the purposes of examining, auditing and inspecting all accounting books, records, work data, documents and activities related hereto. CITY shall maintain such books, records; data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during CITY's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors identified in this Agreement. CITY shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

ARTICLE 7. INCORPORATION OF FTA TERMS

All contractual provisions required by Department of Transportation (DOT), whether or not expressly set forth in this document, as set forth in Federal Transit Administration (FTA) Circular 4220.1F, as amended, 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. CITY shall not perform any act, fail to perform any act, or refuse to comply with any requests, which would cause AUTHORITY to be in violation of the FTA terms and conditions.

ARTICLE 8. ENERGY CONSERVATION REQUIREMENTS

CITY shall 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 Conservation Act.

ARTICLE 9. FLY AMERICA REQUIREMENTS

CITY agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that

recipients and sub-recipient of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. CITY shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

ARTICLE 10. TRANSPORTATION OF EQUIPMENT, MATERIALS OR COMMODITIES BY OCEAN VESSEL

A. CITY shall utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

B. CITY shall furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipping 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 paragraph A of this Article to AUTHORITY (through the CITY's prime CONTRACTOR in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification of the project.

ARTICLE 11. PROHIBITED INTERESTS

A. CITY covenants that, for the term of this Agreement, no director, member, officer or employee of AUTHORITY during his/her tenure in office or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

B. No member of or delegate to, the Congress of the United States shall have any interest, direct or indirect, in this Agreement or to the benefits thereof.

B. Failure to comply with this Article may result in nonpayment or termination of this Agreement.

ARTICLE 12. PRIVACY ACT

CITY shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, CITY agrees to obtain the express consent of the Federal Government before the CITY or its employees operate a system of records on behalf of the Federal Government. CITY understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying

Agreement.

ARTICLE 13. CONFLICT OF INTEREST

CITY agrees to avoid organizational conflicts of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, the CITY is unable, or potentially unable to render impartial assistance or advice to the Authority; CITY's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or the CITY has an unfair competitive advantage. CITY is obligated to fully disclose to the AUTHORITY in writing Conflict of Interest issues as soon as they are known to the CITY. CITY is obligated to fully disclose to the AUTHORITY in writing Conflict of Interest issues as soon as they are known to the CITY. All disclosures must be submitted in writing to AUTHORITY pursuant to the Notice provision herein. This disclosure requirement is for the entire term of this Agreement.

ARTICLE 14. CODE OF CONDUCT

CITY agrees to comply with the AUTHORITY's Code of Conduct as it relates to Third Party contracts which is hereby referenced and by this reference is incorporated herein. CITY agrees to include these requirements in all of its subcontracts.

ARTICLE 15. PROTEST PROCEDURES

The Authority has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting the Contract Administrator/Buyer responsible for this procurement. Any protest filed by the CITY in connection with this solicitation must be submitted in accordance with the Authority's written procedures.

The following additional provisions apply to all agreements over \$10,000

ARTICLE 16. TERMINATION

A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or part, by giving CITY written notice thereof. Upon termination, AUTHORITY shall pay CITY its allowable costs incurred to date of that portion terminated. Said termination shall be construed in accordance with the provisions of CFR Title 48, Chapter 1, Part 49, of the Federal Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to termination for convenience. If AUTHORITY sees fit to terminate this Agreement for convenience, said notice shall be given to CITY in accordance with the provisions of the FAR referenced above. Upon receipt of said notification, CITY agrees to comply with all applicable provisions of the FAR pertaining to termination for convenience.

B. AUTHORITY may terminate this Agreement for CITY's default if a federal or state

proceeding for the relief of debtors is undertaken by or against CITY, or if CITY makes an assignment for the benefit of creditors, or for cause if CITY fails to perform in accordance with the scope of work or breaches any term(s) or violates any provision(s) of this Agreement and does not cure such breach or violation within ten (10) calendar days after written notice thereof by AUTHORITY. CITY shall be liable for any and all reasonable costs incurred by AUTHORITY as a result of such default or breach including, but not limited to, reprocurement costs of the same or similar services defaulted by CITY under this Agreement. Such termination shall comply with CFR Title 48, Chapter 1, Part 49, of the FAR.

ARTICLE 17. RECYCLED PRODUCTS

CITY shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 CFR Part 247. CITY agrees to include this requirement in all of its subcontracts.

The following additional provisions apply to all agreements over \$25,000

ARTICLE 18. DEBARMENT & SUSPENSION:

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - PRIMARY PARTICIPANT AND LOWER-TIER PARTICIPANTS

Unless otherwise permitted by law, any person or firm that is debarred, suspended, or voluntarily excluded, as defined in the Federal Transit Administration (FTA) Circular 2015.1, dated April 28, 1989, may not take part in any federally funded transaction, either as a participant or a principal, during the period of debarment, suspension, or voluntary exclusion. Accordingly, the Authority, acting on behalf of the District, may not enter into any transaction with such debarred, suspended, or voluntarily excluded persons or firms during such period.

A certification process has been established by 49 CFR Part 29, as a means to ensure that debarred suspended or voluntarily excluded persons or firms do not participate in Federally assisted projects. The inability to provide the required certification will not necessarily result in denial of participation in a covered transaction. A person or firm that is unable to provide a positive certification as required by this solicitation must submit a complete explanation attached to the certification. FTA will consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. Failure to furnish a certification or an explanation may disqualify that person or firm from participating in the project.

The following additional provisions apply to all agreements over \$100,000:

ARTICLE 19. DISPUTES

A. Except as otherwise provided in this Agreement, any dispute concerning a

question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by AUTHORITY's Director, Contracts Administration and Materials Management (CAMM), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CITY. The decision of the Director, CAMM, shall be final and conclusive.

B. The provisions of this Article shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Article, CITY shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

C. Pending final decision of a dispute hereunder, CITY shall proceed diligently with the performance of this Agreement and in accordance with the decision of AUTHORITY's Director, CAMM. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any AUTHORITY official or representative on a question of law, which questions shall be settled in accordance with the laws of the state of California.

ARTICLE 20. CLEAN WATER REQUIREMENTS

CITY shall 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. CITY shall report each violation to AUTHORITY and understands and agrees that the AUTHORITY who will in turn, report each violation as required to assure notification to FTA and appropriate EPA Regional Office. CITY agrees to include this requirement in all of its subcontracts.

ARTICLE 21. CLEAN AIR

CONTRACTORS shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CITY shall report each violation to AUTHORITY, who will in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CITY agrees to include this requirement in all of its subcontracts.

ARTICLE 22. LOBBYING

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 above that it will not or has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any City, 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.

ARTICLE 23. BUY AMERICA

A. CONTRACTOR 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 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.

B. A Certificate of Compliance, conforming to the provisions of this Article shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall specifically certify that all manufacturing processes for the materials occurred in the United States, except for the exceptions listed herein.

C. The requirements imposed by law and regulations do not prevent a minimal use of foreign steel and iron materials of 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. CONTRACTOR shall furnish the CITY acceptable documentation of the quantity and value of the foreign steel and iron prior to incorporating the materials in the work.